



STATE OF MARYLAND

**MARYLAND DEPARTMENT OF HEALTH (MDH)
MEDICAL CARE PROGRAMS OFFICE OF FINANCE**

REQUEST FOR PROPOSALS (RFP)

**MEDICAID AGREED UPON PROCEDURES REVIEWS AND
ACCOUNTING AND CONSULTING SERVICES RELATED TO
CAPITATED RATE SETTING FOR MANAGED CARE
ORGANIZATIONS (MCOs) AND MEDICAID REGULATIONS
COMPLIANCE AUDITING FOR MCOs AND
DISPROPORTIONATE SHARE HOSPITALS (DSH)**

RFP NUMBER: MDH-OPASS-22-18952

ISSUE DATE: JANUARY 19, 2021

NOTICE

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace Advantage (eMMA) <https://procurement.maryland.gov> should register on eMMA. See **Section 4.2**.

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO
RESPOND TO THIS SOLICITATION.**

VENDOR FEEDBACK FORM

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet below for contact information).

TITLE: Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH).

SOLICITATION NO: MDH-OPASS-20-

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time
- The subject of the solicitation is not something we ordinarily provide
- We are inexperienced in the work/commodities required
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
- The scope of work is beyond our present capacity
- Doing business with the State is simply too complicated. (Explain in REMARKS section)
- We cannot be competitive. (Explain in REMARKS section)
- Time allotted for completion of the Proposal is insufficient
- Start-up time is insufficient
- Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
- Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
- MBE or VSBE requirements (Explain in REMARKS section)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
- Payment schedule too slow
- Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

State of Maryland: MARYLAND DEPARTMENT OF HEALTH (MDH)
KEY INFORMATION SUMMARY SHEET

| | |
|---|---|
| Request for Proposals | SERVICES: Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) |
| Solicitation Number: | MDH-OPASS-22-18952 |
| RFP Issue Date: | January 19, 2021 |
| RFP Issuing Office: | Maryland Department of Health (MDH) Medical Care Programs Office of Finance |
| Procurement Officer: e-mail: Office Phone: | Queen Davis, Acting Director Office of Procurement and Support Services Maryland Department of Health (MDH) 201 W. Preston Street, Room 416 A Baltimore, MD 21201 dhmh.solicitationquestions@maryland.gov (410) 767-5117 |
| Contract Officer: Email: (See Appendix 1/Definition) | Calvin T. Johnson Office of Procurement and Support Services Maryland Department of Health (MDH) 201 W. Preston Street, Room 416 Baltimore, MD 21201 Phone: 410.767.8216 Fax 410.333.5958 |
| Procurement Coordinator: Email: (See Appendix 1/Definition) | Sabrina Lewis Sabrina.lewis@maryland.gov |
| Proposals are to be electronically sent to: | Attention: Calvin T. Johnson, MS, CNP Procurement Officer II Office of Procurement and Support Services Maryland Department of Health (MDH) Email: calvin.johnson@maryland.gov |
| Pre-Proposal Conference: | Thursday, February 25, 2021 at 1:00 P.M., Local Time 315-924-2047 Log-in pin: 721 600 247#. See Attachment A for directions and instructions. |
| Proposal Due (Closing) Date and Time: | March 29, 2021 at 2:00 P.M., Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page ii). |
| MBE Subcontracting Goal: | 25% with the following subgoals: <ul style="list-style-type: none"> • 7% for African-American MBEs; |

| | |
|--------------------------------------|--|
| | <ul style="list-style-type: none"> ● 4% for Asian-American MBEs; and ● 12% for Woman-Owned MBEs. |
| VSBE Subcontracting Goal: | 1% |
| Contract Type: | Combination of Indefinite Quantity Contract with Firm Fixed Unit Prices as defined in COMAR 21.06.03.02A (1) and 06.A (2), Indefinite Quantity with Not-to-Exceed Prices and Firm Fixed Price (See individual requirements sections in Section 2.3 and Section 3.3 and the Price Form Instructions on Attachment B-2). |
| Contract Duration: | Approximately 5-years 1-month Base w/1 2-year Option Approximately October 1, 2021 – 09/30/2026; 09/30/2028 if the option is exercised. Also, see Section 2.5 and the Contract Period definition in Exhibit 1. |
| Primary Place of Performance: | Contractor’s Offices and Various Locations within Maryland of MCOs and DSHs being Auditing and possible locations of legal proceedings. |
| SBR Designation: | No |
| Federal Funding: | Yes |

TABLE OF CONTENTS - RFP

| | | |
|----------|--|-------------------------------------|
| 1 | Minimum Qualifications | 1 |
| 1.1 | Offeror Minimum Qualifications..... | 1 |
| 2 | Contractor Requirements: Scope of Work | 2 |
| 2.1 | Summary Statement..... | 2 |
| 2.2 | Background and Purpose..... | 2 |
| 2.3 | Responsibilities and Tasks..... | 4 |
| 2.4 | Deliverables and Key Performance Indicators | Error! Bookmark not defined. |
| 3 | Contractor Requirements: General | 37 |
| 3.1 | Contract Initiation Requirements..... | 37 |
| 3.2 | End of Contract Transition | 37 |
| 3.3 | Invoicing..... | 38 |
| 3.4 | Liquidated Damages | 41 |
| 3.5 | Disaster Recovery and Data | 42 |
| 3.6 | Insurance Requirements | 44 |
| 3.7 | Security Requirements..... | 45 |
| 3.8 | Problem Escalation Procedur..... | 50 |
| 3.9 | SOC 2 Type 2 Audit Report | 51 |
| 3.10 | Preferred Offeror Experience | 53 |
| 3.11 | Substitution of Personnel..... | 56 |
| 3.12 | Minority Business Enterprise (MBE) Reports..... | 58 |
| 3.13 | Veteran Small Business Enterprise (VSBE) Reports | 59 |
| 3.14 | Work Orders | 60 |
| 4 | Procurement Instructions | 61 |
| 4.1 | Pre-Proposal Conference | 61 |
| 4.2 | eMaryland Marketplace (eMM) | 61 |
| 4.3 | Questions | 61 |
| 4.4 | Procurement Method | 62 |
| 4.5 | Proposal Due (Closing) Date and Time..... | 62 |
| 4.6 | Multiple or Alternate Proposals..... | 62 |
| 4.7 | Economy of Preparation | 62 |
| 4.8 | Public Information Act Notice | 62 |
| 4.9 | Award Basis..... | 63 |
| 4.10 | Oral Presentation | 63 |

| | | |
|----------|--|-----------|
| 4.11 | Duration of Proposal..... | 63 |
| 4.12 | Revisions to the RFP | 63 |
| 4.13 | Cancellations | 63 |
| 4.14 | Incurred Expenses | 64 |
| 4.15 | Protest/Disputes..... | 64 |
| 4.16 | Offeror Responsibilities..... | 64 |
| 4.17 | Acceptance of Terms and Conditions..... | 64 |
| 4.18 | Proposal Affidavit | 65 |
| 4.19 | Contract Affidavit..... | 65 |
| 4.20 | Compliance with Laws/Arrearages | 65 |
| 4.21 | Verification of Registration and Tax Payment | 65 |
| 4.22 | False Statements | 65 |
| 4.23 | Payments by Electronic Funds Transfer..... | 66 |
| 4.24 | Prompt Payment Policy | 66 |
| 4.25 | Electronic Procurements Authorized..... | 66 |
| 4.26 | MBE Participation Goal | 67 |
| 4.27 | VSBE Goal | 70 |
| 4.28 | Living Wage Requirements | 72 |
| 4.29 | Federal Funding Acknowledgement..... | 73 |
| 4.30 | Conflict of Interest Affidavit and Disclosure | 73 |
| 4.31 | Non-Disclosure Agreement | 74 |
| 4.32 | HIPAA - Business Associate Agreement | 74 |
| 4.33 | Nonvisual Access | 74 |
| 4.34 | Mercury and Products That Contain Mercury | 74 |
| 4.35 | Location of the Performance of Services Disclosure | 74 |
| 4.36 | Department of Human Services (DHS) Hiring Agreement..... | 74 |
| 4.37 | Small Business Reserve (SBR) Procurement | 74 |
| 5 | Proposal Format | 76 |
| 5.1 | Two Part Submission..... | 76 |
| 5.2 | Proposal Delivery and Packaging..... | 76 |
| 5.3 | Volume I - Technical Proposal..... | 77 |
| 5.4 | Volume II – Financial Proposal..... | 85 |
| 6 | Evaluation and Selection Process..... | 86 |
| 6.1 | Evaluation Committee | 86 |
| 6.2 | Technical Proposal Evaluation Criteria..... | 86 |

| | | |
|----------------------|--|------------|
| 6.3 | Financial Proposal Evaluation Criteria..... | 86 |
| 6.4 | Reciprocal Preference..... | 86 |
| 6.5 | Selection Procedures..... | 87 |
| 6.6 | Documents Required upon Notice of Recommendation for Contract Award | 88 |
| 7 | RFP ATTACHMENTS AND APPENDICES..... | 89 |
| Attachment A. | Pre-Proposal Conference Response Form..... | 93 |
| Attachment B. | Financial Proposal Instructions & Form..... | 94 |
| Attachment C. | Proposal Affidavit..... | 101 |
| Attachment D. | Minority Business Enterprise (MBE) Forms | 110 |
| Attachment E. | Veteran-Owned Small Business Enterprise (VSBE) Forms | 147 |
| Attachment F. | Maryland Living Wage Affidavit of Agreement for Service Contracts | 156 |
| Attachment G. | Federal Funds Attachments..... | 160 |
| Attachment H. | Conflict of Interest Affidavit and Disclosure | 168 |
| Attachment I. | Non-Disclosure Agreement (Contractor) | 169 |
| Attachment J. | HIPAA Business Associate Agreement..... | 175 |
| Attachment K. | Mercury Affidavit..... | 184 |
| Attachment L. | Location of the Performance of Services Disclosure | 185 |
| Attachment M. | Contract..... | 187 |
| Attachment N. | Contract Affidavit | 206 |
| Attachment O. | DHS Hiring Agreement..... | 210 |
| Appendix 1. – | Abbreviations and Definitions..... | 212 |
| Appendix 2. – | Offeror Information Sheet..... | 217 |
| Appendix 3. – | Non-Disclosure Agreement (Offeror) | 218 |
| Appendix 4. – | Labor Resume Form | 220 |
| Appendix 5. – | MCO and DSH Events Schedule..... | 223 |

ATTACHMENT B3-FINANCIAL PROPOSAL WORKBOOK

EXHIBIT 1 – MANAGED CARE ORGANIZATIONS SUBJECT TO AUDIT

EXHIBIT 2 – MANAGED CARE ORGANIZATIONS (YEAR)-STATEWIDE REPORTED HEALTHCHOICE FINANCIAL MONITORING REPORT HFMR

EXHIBIT 3 – MARYLAND DEPARTMENT OF HEALTH SCHEDULE OF MEDICAID AGREED UPON PROCEDURES

EXHIBIT 4 – MARYLAND DEPARTMENT OF HEALTH-IBNR REVIEW

EXHIBIT 5 – UNDERWRITING EXHIBIT-FISCAL YEAR ENDED 12/31/2012

EXHIBIT 6 – REPORT ON DISPROPORTIONATE SHARE HOSPITAL VERIFICATIONS

EXHIBIT 7 - CMS 2017-2018 MEDICAID MANAGED CARE RATE DEVELOPMENT GUIDE

EXHIBIT 8 – MEDICAL LOSS RATIO (MLR) REQUIREMENTS RELATED TO THIRD-PARTY VENDORS

1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

The Offeror must document in its Proposal the following Minimum Qualifications have been met:

1.1.1 The Offeror shall have performed audits and related accounting and consulting services for a minimum of three (3) years within five (5) years prior to the Proposal Due Date. References shall be submitted with the information required in Section 5.3.2.I.

1.1.1.1 During this period of time the Offeror must have performed audits and related accounting and consulting services for at least three different clients, with a minimum duration of at least three months working for each of the three clients. Even if the Offeror worked for a single client for three or more years within the required five-year period of time, the Offeror still must have performed work for at least two other clients for at least 3 months each.

1.1.1.2 If among three clients the Offeror cannot document at least three years of collective work experience, the Offeror may provide as many additional references as necessary to total three years of work experience.

1.1.1.3 The Offeror must have been paid at least \$500,000 over the required three-year period for performing audits and related accounting and consulting services. The Offeror may provide as many references as necessary to total \$500,000 in payments over the required three years of work experience.

1.1.2 At the time of Proposal submission, the Offeror shall be independent from (i.e., have no financial interest in, corporate affiliation with, or apparent conflict with any entity participating in) the Maryland Medical Assistance Program and from any Provider that is potentially subject to audit.

As proof of meeting this requirement the Offeror shall submit with its Proposal the Conflict of Interest Affidavit and Disclosure (Attachment H) indicating:

- A. No potential conflict of interest.
- B. A potential conflict of interest, but with an explanation of the means by which the Offeror intends to ameliorate that potential conflict.

If the Offeror indicates a potential conflict of interest, but one that it proposes to ameliorate, the Procurement Officer will determine whether the described means of amelioration is sufficient to permit the continued participation of the Offeror in this procurement. The Procurement Officer may also seek additional safeguards from the Offeror before determining that the Offeror may continue to participate in this procurement. If, however, the Procurement Officer determines that an Offeror has or potentially has a conflict of interest that is not sufficiently ameliorated, that Offeror will be eliminated from continued participation in the procurement leading to Contract award.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

2 Contractor Requirements: Scope of Work

2.1 Summary Statements

- 2.1.1 The Maryland Department of Health (MDH) Medical Care Programs Office of Finance is issuing this Request for Proposals (RFP) to qualified firms to perform Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH)
- 2.1.2 It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the State.
- 2.1.3 MDH intends to make a single award to the Offeror whose proposal is deemed to be the most advantageous to the State. (See Section 6.5.3.)
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

2.2 Purpose and Background

2.2.1 Purpose

The State is issuing this RFP for the purpose of receiving services for Medicaid Agreed Upon Procedures Reviews (MCO Reviews) and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH). Included within these services is the requirement to perform Medical Loss Ratio examinations of MCOs.

The Centers for Medicare and Medicaid Services (CMS) requires an independent Agreed Upon Procedures Review to be conducted for all MCOs to calculate, report and use in the development of actuarially sound rates (Article 42 CFR 438.8). Exhibit 8. The Contractor shall primarily conduct a Medicaid Managed Care Organizations (MCOs) Agreed Upon Procedures review for all MCO Providers to be able to assure the State that the expenditures of each MCO are accurately reported in accordance with appropriate regulations.

For states to receive Federal Financial Participation (FFP) for DSH payments, federal law requires states to submit an independent certified audit and an annual report to the Secretary describing DSH payments made to each DSH hospital. The report must identify each disproportionate share hospital that got a DSH payment adjustment, and provide any other information the federal government needs to ensure the appropriateness of the payment amount. The annual certified independent audit includes specific verifications to make sure all DSH payments are appropriate.

This Contract will assist the State in meeting its federally mandated requirements for Medicaid reimbursements for Disproportionate Share Hospitals (DSH) and rate setting requirements for Managed Care Organizations (MCOs).

2.2.2 Background

2.2.2.1 Contract History

The Medical Assistance Program has used a contractual auditor to perform Agreed Upon Procedures Reviews of the Cost Reports of Providers since July 1982. The Department uses desk reviews and Agreed Upon Procedures Reviews of the Cost Reports of Providers of health care to Medical Assistance participants to assure compliance with applicable laws and regulations and as the basis for rate setting.

2.2.2.2 Statutory Authority

Maryland Health General Article, Section 15-103, Annotated Code of Maryland establishes the Maryland Medical Assistance Program to provide services for the medically needy or indigent persons. The Providers (see Exhibit 1 definition, meaning 2) of health care services who participate in the Medical Assistance Program are entitled to reimbursement for specific health care services rendered to Medical Assistance beneficiaries. For a significant part of its cost related reimbursement, the Medical Assistance Program has adopted Medicare cost principles as its primary basis for reimbursement.

2.2.2.3 MCO Agreed Upon Procedures Reviews (MCO AUP Reviews)

A. It has been generally determined that MA recipients receive better care, with better outcomes and at less expense when their care is coordinated. Because of this, most MA recipients in Maryland are required to enroll with one of the Managed Care Organizations (MCO) contracted by the Maryland Medicaid Program (See Exhibit 1) as part of a program called the “HealthChoice” Program. An MCO is a healthcare organization that provides services to Medicaid recipients by contracting with a network of licensed/certified healthcare Providers (see Exhibit 1 definition, meaning 2). All MCOs are responsible to provide or arrange for a wide array of healthcare services. Under both federal and Maryland law and regulations, for the most part MCOs receive fixed monthly capitated (per member per month) payments for which they provide the needed and required care of those enrolled in their MCO. (A small percentage of unusual and expensive procedures for HealthChoice participants are paid by the Program directly to the Providers (see Exhibit 1 definition, meaning 2) on a fee-for-service basis.) To maintain the viability of the HealthChoice Program, it is necessary to ensure that the capitated rates paid to participating MCOs are sufficient to pay for the proper medical care for recipients, but not so generous that MCOs receive excessive profits or operating reserves. To achieve this proper capitated rate balance – not too much and not too little – the Medical Assistance Program needs an independent, capable and knowledgeable entity to perform Agreed Upon Procedures Reviews related to MCO financial statements and recommend adjustments to the financial statements as appropriate. The resulting adjusted financial statements then become the “base” from which a separate contractor, not in the scope of this solicitation, will apply trend and other actuarial adjustments. Such MCO Reviews shall be completed in accordance with the Managed Care Rate Development Guide at

<https://www.medicaid.gov/medicaid/managed-care/downloads/guidance/2019-2020-medicaid-rate-guide.pdf>.

B. Beginning in 2019, Medical Loss Ratio (MLR) Examination Reports are also now required to be performed on each MCO. (See Exhibit 8.) While not part of the AUP Reviews per se, because the MLRs Examination Reports involve the same MCOs and are to be completed within the same

timeframes, discussion of MLR Examination reports are included in MCO AUP Review section, 2.3.2.

DSH Audits

Exhibit 6 of this solicitation details that the State of Maryland must provide an annual independent certified examination report verifying items with respect to its Disproportionate Share Hospitals (DSH), as required by 42 CFR §455.304(d). This is accomplished by using the procedures and principles described in American Institute of Certified Public Accountants (AICPA) attestation standards general DSH Audit and Reporting Protocol as required by 42 CFR (Code of Federal Regulations) §455.301 and §455.304(d), CMS Pub. 15-1 (The Provider Reimbursement Manual), as well as Generally Accepted Accounting Principles and Generally Accepted Auditing Standards (GAAP and GAAS) and the specific Maryland Medicaid Regulations.

2.2.3 Contract Monitor

The Contract Monitor (See Appendix 1 definition) for this Contract is:

Thelma McClellan, Deputy Director,
Maryland Department of Health
Medical Care Programs – Office of Finance
201 W. Preston Street – Room 218
Baltimore, MD 21201
Phone: (410) 767-5192 Fax: (410) 333-7789
E-mail: thelmat.mcclellan@maryland.gov

2.2.4 Other State Responsibilities

- A. The State is not required to provide any facilities or equipment necessary for Contractor performance under the Contract. All Medicaid audit work will be performed at the Provider audit sites and the Contractor's office(s).
- B. The State is responsible for providing the required updated list of Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSHs) to the Contractor to facilitate the Contractor's performance of the work. There are currently nine (9) MCOs and thirty-one (31) eligible DSHs. However, each of these lists can vary from year to year.

A.2.5 Contract Term Overlap

Although the final Contract Period of the Contract is expected to end on January 31st of either 2026 or 2028 if the single available Contract renewal option is exercised, the follow-up contract is expected to begin on January 1st of the applicable year for a one (1) month overlap between contractors. Such an overlap should not present any problems with the responsibilities of either contractor since the outgoing contractor will be assisting with completing the final DSH Audit report while the successor contractor would commence work on MCO AUP Review work under the new contract.

2.3 Responsibilities and Tasks

2.3.1 General and Startup Requirements

2.3.1.1 Reliance Upon Contractor

Throughout the duration of this Contract, the Contractor shall provide subject matter expertise for the work to be performed under this Contract and act as a consultant to the Department.

2.3.1.2 Compliance with Timeframes

The Contractor must complete all MCO Agreed Upon Procedures Reviews and related accounting work, MLR Examination Reports and DSH audits as described in this RFP within the established time frames in Section 2.4.3 or Exhibit 5, subject to the allowances of Section 2.3.2.5.2.

2.3.1.3 Local Office Requirements

For the entire duration of the Contract, the Contractor must have a local office within a twenty (20) mile radius of the 201 W. Preston St. State Office Building in Baltimore. As per Section 5.3.2.F.4, Offerors are requested to provide the intended location of their local office in their Technical Proposal. At the Contract Initiation (Kick-Off) Meeting described in Section 2.3.1.4, the Contractor shall provide documentation confirming that it will have the local office described in its Technical Proposal, or an alternative site within a twenty (20) mile radius of the State Office Building agreed to by the Contract Monitor, established prior to the NTP Date of this Contract. The Contractor's local office shall have sufficient space to permit up to four Departmental officials to hold frequent and unscheduled visits or meetings to properly review auditing documents as needed. As appropriate, Department staff must be provided access to such documents by hard copy and/or electronically, including access via Contractor provided computers. The failure of the Contractor to establish a Local Office meeting all requirements of this Section by the NTP Date or to maintain a Local Office in compliance with this Section for the full duration of the Contract will result in the assessment of Liquidated Damages as described in Attachment P, Items 1 and 2.

2.3.1.4 Contract Initiation (Kick-Off) Meeting

2.3.1.4.1 Within 10 calendar days after Contract Commencement (See Appendix 1 definition), the Contractor shall attend a Contract Kick-Off meeting with the Contract Monitor and other involved MA Program personnel. This meeting will occur via web-based communication. The failure of the Contractor to have appropriate representation as per Section 2.3.1.4.3 at this meeting will result in the assessment of Liquidated Damages as per LD Item #3, on Attachment P.

The purpose of this meeting will be for involved State and Contractor personnel to meet each other and share contact information and to review:

- A. Major Contract requirements, including activity completion timeframes, billing and payment procedures and meeting and report requirements.
- B. The Contractor's efforts-to-date and planned efforts to properly commence performance of the Contract as of the NTP Date or other dates specified in the RFP. Specifically, the Contractor will be required to discuss the status of:
 - i. The establishment of a local office as required by Section 2.3.1.3.
 - ii. Completion of a revised Problem Escalation Procedure as required by Section 3.8.
 - iii. Efforts to staff the Contract.
 - iv. The ability to add staff as necessary to meet required timeframes.

- v. The ability to attend emergency meetings on as little as 3 hours' notice as required by Section 2.3.1.6.2.
- vi. The ability to submit plans for unanticipated consulting requirements as required by Section 2.3.5
- vii. Implementing the various commitments contained in its Technical Proposal
- viii. Efforts to finalize Agreed Upon Procedures no later than 30 days after the NTP Date as required by Section 2.3.1.5.

The failure of the Contractor to provide the above required status reports will result in the assessment of Liquidated Damages as per LD Item # 4, on Attachment P.

- C. At this or a subsequent meeting, and/or in written follow-up, the Contract Monitor will provide:
 - i. A tentative schedule for regular Contract status meeting, per Section 2.3.1.6.
 - ii. The format for monthly Contract progress reports, per Section 2.3.1.7.1.
 - iii. The format and frequency of any required special reports, per Section 2.3.1.7.2

2.3.1.4.2 To the extent feasible, the Kick-Off meeting will be scheduled at a mutually agreed upon time and date within the 10 days after Contract Commencement as required by Section 2.3.1.4.1. In the event mutual agreement cannot be reached, the Contract Monitor will direct the Contractor when the meeting will occur.

2.3.1.4.3 The Contractor's Contract Manager, any Audit Manager and at least 1 Supervising or Senior Auditor must attend this meeting as representatives of the Contractor. The Contractor shall also have sufficient personnel present to authoritatively discuss the items listed in Section 2.3.1.4.1.B, and to record the proceedings as required in Section 2.3.1.4.4. The Contractor's Contract Manager or other senior staff of the Contractor attending this meeting must be authorized to make commitments or representations for the Contractor.

2.3.1.4.4 The Contractor must record minutes of the Kick-Off meeting, to include the complete identity and contact information of all attendees, items discussed, and commitments made by the Contractor, including committed completion dates. A draft of these minutes must be provided to the Contract Monitor within three (3) Business Days of the meeting. Within two (2) Business Days of receipt of the draft minutes the Contract Monitor will either approve the minutes in writing or will identify required changes. Any required changes must be made within two (2) additional Business Days. Final minutes of the Kick-Off meeting must be submitted by the Contractor to all meeting attendees no later than seven (7) Business Days after the meeting occurs. The failure of the Contractor to complete and distribute minutes as required by this Section will result in the assessment of Liquidated Damages as per LD #5, on Attachment P.

2.3.1.5 Finalization of Initial Agreed Upon Procedures and Required Updating

2.3.1.5.1 The Contractor must submit a proposed final written protocol of Medicaid Agreed Upon Procedures based upon the draft submitted with the Technical Proposal (See Section 5.3.2.F.6. a), to the Contract Monitor for approval before commencing the actual reviews. The proposed final written protocol shall initially be given to the Contract Monitor within 30 days after the NTP Date. The Contract Monitor shall approve the protocol of Medicaid Agreed Upon Procedures reviews within 30 calendar days after Contractor submission or provide the Contractor with his/her objections and cure requirements. Work

may only begin on the initial Agreed Upon Procedures Review cycle after Contract Monitor approval of the Medicaid Agreed Upon Procedures. (See LD Item # 6 on Attachment P.)

2.3.1.5.2 Subsequent to the completion and acceptance of the initial and each subsequent Agreed Upon Procedures Review cycle, the Contractor and Contract Monitor will review the then existing Agreed Upon Procedures protocol to determine if any changes should be made. This review should occur 15 to 30 days, as directed by the Contract Monitor, before work would begin on a new Agreed Upon Procedures Review cycle. Work on any Agreed Upon Procedures Review cycle must always be conducted using the most recent Agreed Upon Procedures protocol.

2.3.1.6 Meetings

The Contractor shall:

2.3.1.6.1 Attend regularly scheduled meetings established by the Department to discuss the status of the contracted work and other pertinent items. These meetings will typically be held at the State Office Building, 201 W. Preston Street, Baltimore, Maryland, but at the discretion of the Contract Monitor may also be held at the Contractor's Local Office (see Section 2.3.1.3) or by conference call. (See LD Item # 7 on Attachment P.)

2.3.1.6.2 Participate in Emergency meetings with at least three hours' notice, typically by conference call, but at the direction of the Contract Monitor, in person at the State Office Building, 201 W. Preston Street, Baltimore, Maryland. Emergency meetings may only be called during Normal State Business Hours on Business Days. (See LD Item # 8 on Attachment P.)

2.3.1.6.3 Prepare minutes and distribute a draft of these minutes to the Contract Monitor within five (5) Business Days for regular meetings and three (3) Business Days of emergency meetings. Within two (2) Business Days of receipt of the draft minutes the Contract Monitor will either approve the minutes in writing or will identify required changes. Any required changes must be made within two (2) additional Business Days.

The final approved version of the minutes is to be distributed to the Contract Monitor and other designated Department personnel, designated Contractor personnel and any other attendees at each meeting.

The failure of the Contractor to complete and distribute minutes as required by this Section will result in the assessment of Liquidated Damages as per LD Item # 9, on Attachment P.

2.3.1.7 Reports

2.3.1.7.1 Monthly Progress Reports

A. By the 15th day of each month of the Contract, the Contractor is to submit a written **Progress Report** of all work performed by the Contractor in the previous month (the Reporting Period). The contents of this Progress Report will be an important factor for the Contract Monitor to determine whether submitted invoices should be paid, as detailed in Sections 2.3.2.6 and 2.3.3.2.

B. Progress Reports must also highlight if the Contractor anticipates meeting any and all established deliverables timeframes - e.g., AUP Reviews, MLR Examination Reports, DSH Audits, Special Projects, etc. - or if there is a substantial possibility that one or more such timeframe will not be satisfied.

- i. If the Contractor reports the possibility of missing a deliverable timeframe, it must describe the reason why the timeframe is in jeopardy of being missed and what increased effort it will expend to try to prevent that occurrence.

If the Contract Monitor is not satisfied that the Contractor's indicated level of remedial effort will be sufficient for the Contractor to get all work back on schedule, the Contract Monitor may direct the Contractor to implement a Corrective Action Plan, as described in Section 2.5.

- ii. If the Contractor believes the reason(s) for a potentially missed timeframe is/are solely or primarily due to circumstances beyond its control, the Contractor should describe the reason(s) for this conclusion and whether it believes that intervention by the Department may help avoid the missed timeframe. (See Section 2.3.2.3.8.)
- iii. If the potential for a missed timeframe develops quickly and the Contractor deems it advisable to so inform the Contract Monitor prior to the next Monthly Progress Report, the Contractor shall make a Special Report of this circumstance as described in 2.3.1.7.2.B.

C. If in the course of performing work under this Contract the Contractor discovers any circumstance concerning improper, unallowable, or unusual costs, recommendations, corrections and/or rate setting, as further described in Sections 2.3.2.4, that it believes should be communicated to the Department prior to when it normally would do so, but not on an urgent basis as described in Section 2.3.1.7.2.C, it should include this information in a Progress Report.

D. The failure of the Contractor to submit a properly prepared Progress Report as required by this Section will result in the assessment of Liquidated Damages as per LD Item # 10 on Attachment P.

2.3.1.7.2 Special Reports

A. The Contract Monitor reserves the right to require the Contractor to provide **Special Reports** (reports more frequently than monthly) if deemed necessary to: 1. Determine if Contract deliverable timeframes have been met. 2. Determine if a submitted invoice should be paid, in part or in full. Or 3. Obtain any other information required by the Contract Monitor that is not considered part of a Special Project for which report timeframes have already been determined (See Section 2.3.5). When the Contract Monitor informs the Contractor of the need for a Special Report, he/she will also either provide a timeframe within which the Report is needed or request the Contractor to state when the report can be provided. If the Contractor believes it will not be able to provide the report to the extent requested by the Contract Monitor by the specified timeframe, the Contractor shall inform the Contract Monitor both what information can be provided by the originally stated timeframe and when it can provide all originally requested information. The Contract Monitor can accept the rationale for any delayed reporting and the Contractor's statement of when it can provide the report, or after giving due consideration to the Contractor's position, reject the reason for any delay and direct the Contractor to meet the originally provided timeframe.

B. Under the circumstances described in Section 2.3.1.7.1.B.iii, the Contractor must prepare and submit to the Contract Monitor a Special Report detailing why a deliverable timeframe might be missed and what both the Contractor and the Department might do to try to avoid this situation. Such a Special Report shall be submitted as soon as the Contractor determines there is substantial risk of one or more timeframes being missed.

C. If in the course of performing work under this Contract the Contractor discovers any circumstance concerning improper, unallowable, or unusual costs, recommendations, corrections and/or rate setting, as further described in Section 2.3.2.4, that it believes should be communicated to the Department in an urgent manner, it should submit an urgent Special Report to the Contract Monitor detailing its findings, what it

perceives as the danger or severe negative consequence of allowing this circumstance to continue, and any timeframe by which some action should occur to prevent or mitigate serious negative consequences.

D. The failure of the Contractor to submit a properly prepared Special Report as required by this Section will result in the assessment of Liquidated Damages as per LD Item # 11 on Attachment P.

2.3.1.7.3 Report Formats

A. Progress Reports typically will be segmented into four sections as follows:

- i. Section one shall be for the normal description of work performed during the reporting period, including the involved labor hours.
- ii. A second section should focus on whether the Contractor projects that all work will be completed within the required timeframe.
- iii. A third section should focus on recommendations, corrections, rate setting, etc., that the Contractor believes the Contract Monitor should be apprised about sooner than would normally occur.
- iv. A fourth section should summarize any Special Report(s) that was submitted during the Reporting Period. (See Section 2.3.1.7.1A.)
- v. Even if there is nothing to report in sections 3 or 4, (recommendations and Special Reports), these sections and their headings should be retained with the notation, "No information to report!"

B. The specific format for Progress or other reports will be provided to the Contractor by the Contract Monitor, or otherwise agreed to between the Contractor and Contract Monitor prior to the submission of the first Contractor invoice. Invoices that are submitted prior to agreement on the required format for reports will not be paid.

2.3.1.8 Information Security Plan (ISP)

Within 30 days after the NTP Date, the Contractor shall provide an information security plan for approval/disapproval by the Contract Monitor. Within five (5) Business Days of receipt of the draft ISP the Contract Monitor will either approve it in writing or will identify required changes. Any required changes must be made within three (3) additional Business Days. (Also see Sections 2.3.2 and 3.7.) The failure of the Contractor to submit a properly prepared ISP as required by this Section will result in the assessment of Liquidated Damages as per LD Item # 12 on Attachment P.

2.3.1.9 Continuity of Operations Plan (COOP)

As required by Section 5.3.2.F.11, Offerors are to provide a draft Continuity of Operations Plan detailing how they will ensure adherence with all audit timeframes despite personnel turnover and any and all other potential business interruption events. Within 30 days after the NTP Date, the Contractor shall provide a finalized COOP for approval/disapproval by the Contract Monitor. Within five (5) Business Days of receipt of the draft COOP, the Contract Monitor will either approve it in writing or will identify required changes. Any required changes must be made within three (3) additional Business Days. (Also see Section 3.11.)

The failure of the Contractor to submit a properly prepared COOP as required by this Section will result in the assessment of Liquidated Damages as per LD # 13 on Attachment P.

2.3.1.10 Conflict of Interest

If a conflict of interest or issue regarding impairment of independence (see Section 1.1.2 for explanation of 'independent', Section 4.30 and Attachment H) arises during the Contract period, the Contractor shall provide disclosure to the Department's Contract Monitor within two Business Days with a written description of how the actual or potential conflict will be avoided, mitigated or neutralized. If the Contract Monitor is not satisfied with the proposed means to ameliorate the conflict, he/she will notify the Contractor of the inadequacy of the methodology to resolve the conflict. Within 5 Business Days of such notification the Contractor must revise its proposal to ameliorate the conflict.

If the Contract Monitor remains dissatisfied that the Contractor has adequately addressed the conflict, the Contract Monitor may either direct the Contractor to re-submit its conflict resolution plan within 3 Business Days with increased protections to resolve the conflict or request the Procurement Officer to suspend or terminate performance under the Contract. As per Attachment M, Items 20 and 17, respectively, the Procurement Officer has the right to suspend or terminate the Contractor's performance under the Contract. If the Procurement Officer agrees that an actual or potential conflict of interest has not been satisfactorily resolved, in his/her discretion, the Procurement Officer will suspend or terminate the Contractor's performance under the Contract.

The failure of the Contractor to timely inform the Contract Monitor of an actual or potential Conflict of Interest or to timely make adjustments to an amelioration plan considered inadequate by the Contract Monitor as required by this Section will result in the assessment of Liquidated Damages as per LD # 14 on Attachment P.

2.3.1.11 Ownership, Security, Access and Retention of Data

2.3.1.11.1 The Contractor shall provide for physical and electronic security of all Protected Health Information generated or acquired by the Contractor in implementation of the Contract, in compliance with the Health Insurance Portability and Accessibility Act (HIPAA) as set forth in Section 1.38 "HIPAA – Business Associate Agreement", and consistent with the Business Associate Agreement executed between the parties (see Attachment J), as well as RFP sections 3.7 and 4.32 and Attachment M - the Contract - Clause 42.

2.3.1.11.2 All data, materials and Working Papers (see definition in RFP Appendix 1. – Abbreviations and Definitions) developed under this Contract are the property of the State of Maryland and must be turned over to the Contract Monitor in an efficient manner for a smooth transition upon termination or expiration of the Contract, as determined by the Contract Monitor. (Also see Sections 3.2.3 and 3.2.5 and Attachment M – the Contract – Clauses 5 and 6.) Included in this requirement is the transfer of the data in the electronic files described in Section 2.3.1.11.4, below.

2.3.1.11.3 The Contractor shall, during the Contract period, maintain all data, material and Working Papers in the Local Office described in Section 2.3.1.3 or in another location with convenient access to the Department approved in advance by the Contract Monitor.

- A. Upon at least 2-hours notification that Department personnel will be coming to the Local Office (or other pre-approved location), the Contractor must have any requested data, materials or Working Papers available for the use of or inspection by the Department personnel as of the time they appear in the Local Office or other location.

- B. If Department personnel are in the Contractor's Local Office (or other pre-approved Contractor location), and make an ad hoc request for specific data, materials or Working Papers, the Contractor shall provide any requested data, materials or Working Papers within 30 minutes of the request.
- C. The failure of the Contractor to maintain and provide Working Papers and other documents as required in this Section 2.3.1.11.3, will result in the assessment of Liquidated Damages as per LD Item # 15 on Attachment P.

2.3.1.11.4 All data, material and Working Papers created or maintained by the Contractor should also be available electronically via a database system or other data warehousing method created and maintained by the Contractor.

- A. The Contract Monitor and other Department staff identified by the Contract Monitor shall have constant read-only access to this database or data warehouse method via a secure means as agreed upon between the Contract Monitor and Contractor.
- B. The Contractor and Contract Monitor may also agree upon some degree of manipulation, reconfiguration or extractability of such data, materials, etc., by Department personnel, as long as the original files are not changed. (See Section 5.3.2.F.15.)
- C.
 - i. Department staff designated by the Contract Monitor at least 3 Business Days prior to the NTP Date, must have electronic access to the Contractor's data, materials and Working Papers as of the NTP Date.
 - ii. Other than as described in Section 2.3.1.11.4.C.i, Department staff designated by the Contract Monitor to have electronic access to the Contractor's data, materials and Working Papers must be provided with such access within 3 Business Days of the Contractor's receipt of notice from the Contract Monitor.
- D. The failure of the Contractor to maintain and provide Working Papers and other documents electronically or to provide access to designated Department staff as required in this Section 2.3.1.11.4, will result in the assessment of Liquidated Damages as per LD Item # 16 on Attachment P.

2.3.1.11.5 All files shall be available for a period of six (6) years after completion of the associated Review, including Appeals or five (5) years after the expiration of the Contract, whichever period is longer.

2.3.1.11.6 As a corollary to the requirement of Section 2.3.1.11.5, and despite the requirement in Sections 3.2.3 and 3.2.5 for all Work Papers and other data to be transferred to the Department at the expiration of the Contract, for the duration of time described in Section 2.3.1.11.5, the Contractor may not destroy any data, files and/or Work Papers developed in the performance of this Contract, unless and until the Contract Monitor has provided written approval for the destruction.

2.3.2 Requirements for Medicaid Managed Care Organizations (MCOs) Agreed Upon Procedures Reviews, MLR Examinations and Related Accounting and Auditing Services

(As stated in Section 2.3.3 and as noted below, certain Section 2.3.2 aspects also apply to DSH Audits.)

2.3.2.1 AUP Reviews Generally and Applicable Guidelines and Regulations

The Contractor shall conduct a Medicaid Managed Care Organizations (MCOs) Agreed Upon Procedures review for all MCO Providers to be able to assure the State that the expenditures of the MCO are accurately reported in accordance with appropriate regulations. This is accomplished by applying the Agreed Upon Procedures that are intended to verify the necessity of and reasonableness of the expenditures of the various MCOs. The Medicaid MCOs Agreed Upon Procedures Reviews shall be consistent with all principles described in, 42 CFR, , CMS Pub. 15-1 as well as GAAP and GAAS and the specific Maryland Medicaid Regulations at COMAR 10.09.65 through 10.09.75. Examples of review procedures are included in Exhibit 3.

2.3.2.2 MCOs to be Reviewed for Both AUP Reviews and MLR Examinations

Each Contract Period the Contractor shall review all MCO Providers enrolled in Maryland's Health Choice Medicaid Managed Care Program, including MCOs that might only have been enrolled for part of the year. As of the date of issuance of this RFP and for several years prior thereto, there are/have been nine (9) enrolled MCOs (See Exhibit 1 definition.)

2.3.2.3 Required MCO AUP Review and MLR Examination Components

2.3.2.3.1. AUP Reviews

In performing yearly MCO AUP Reviews, the Contractor must:

2.3.2.3.1.1 Determine whether MCOs have implemented and utilized financial administrative and internal control procedures to discharge their cost reporting responsibilities in accordance with Maryland Medicaid Regulations outlined in COMAR 10.09.65 through 10.09.75.

2.3.2.3.1.2 Determine the accuracy and reasonableness of total operating costs and allocation of such costs among the various Cost Centers and between Providers, where applicable, in accordance with the reimbursement principles promulgated by the Department in COMAR 10.09.65.

2.3.2.3.1.3 Determine the accuracy of other financial and statistical data that may be required to assure effective and efficient operation of the Medical Assistance Program.

2.3.2.3.1.4 From a sampling of claims and other source data which the Contractor will obtain from the MCOs, determine whether the costs incurred and claimed are allowable under applicable cost principles and recommend adjustments based on tests of reliability and allowability.

2.3.2.3.1.5 Include a written statement indicating whether the Providers' financial reports present a fair basis for reimbursement for services rendered in conformity with prescribed State and Federal cost principles and are prepared consistently from one period to the next.

2.3.2.3.1.6 Provide a summary report of all Providers in the same format as for each individual MCO.

2.3.2.3.1.7 If despite reasonable effort by the Contractor to obtain needed information a Provider is uncooperative or unable for any reason to provide information required by the Contractor to fulfill its responsibilities under the Contract, as soon as the lack of such information threatens the timely and accurate fulfillment of such responsibilities, the Contractor shall notify the Contract Monitor of the continuing non-availability of the information. Depending on the

circumstances causing the non-availability of required information, the Contract Monitor or other Department personnel may intercede with the Provider at issue to try to spur the timely release of the needed information. The timeliness of and degree of efforts by the Contractor to try to obtain needed information from a Provider and the timeliness of notification to the Contract Monitor of the inability to obtain needed information, are factors the Contract Monitor will consider in determining whether any missed timeframes should be excused. (See Sections 2.3.1.7.1 B, 2.3.1.7.2.B and 2.3.2.4.2)

2.3.2.3.2. MLR Examinations

In performing yearly Medical Loss Ratio (MLR) Examination for each MCO the Contractor must verify whether the MCO has performed each activity listed in Section 2.3.2.3.2.2, including, as appropriate, obtaining copies of indicated documents.

2.3.2.3.2.1 Contractor Actions Concerning MCO Deficiencies

2.3.2.3.2.1.1 In the event the Contractor determines that an MCO has not performed a required activity and it is still possible for the MCO to perform the activity, even if it may be later than originally required, the Contractor should inform the MCO that it failed to perform the activity and request it to promptly do so.

2.3.2.3.2.1.2 If an MCO has performed a required activity but in the professional judgement of the Contractor the activity has not been performed properly and/or satisfactorily, including being inadequately documented or the documentation supports a different conclusion, and it is still possible for the MCO to perform the activity, even if it may be later than originally required, the Contractor should inform the MCO that it failed to properly or adequately perform the activity and request it to promptly redo the activity properly and/or at a higher quality level.

2.3.2.3.2.1.3 If in its professional judgement the Contractor believes it should inform the Contract Monitor of an action or inaction of an MCO sooner than the normal timeframe for competing the MLR Examination Report, the Contractor should include this information in a report to the Contract Monitor as described in Sections 2.3.1.7.1 C or 2.3.1.7.2 C.

2.3.2.3.2.2 Required MCO Activities to be verified by the Contractor.

2.3.2.3.2.2.1 Obtain an audited statutory financial statement for the current audit period.

2.3.2.3.2.2.2 Obtain a complete trial balance for the current audit period, as well as a crosswalk to show where items from the trial balance appear on the MLR and HealthChoice Financial Monitoring Report (HFMR).

2.3.2.3.2.2.3 Obtain a general ledger detail for the period under review. Verify that the transaction totals for each account reconcile to the trial balance activity totals and ultimately the MLR and HFMR reported totals.

2.3.2.3.2.2.4 Obtain detailed supporting documentation for any adjustments made to the trial balance and/or adjustments included on the appropriate MLR and HFMR form lines, including all audit journal entries.

- 2.3.2.3.2.2.5 Obtain policies and procedures that relate to the components/calculation of the MLR.
- 2.3.2.3.2.2.6 Obtain policies and procedures that relate to medical claims regarding the receipt, processing and reconciliation of claims from outside providers.
- 2.3.2.3.2.2.7 Obtain a listing of internal controls used to deter as well as detect and prevent fraud, including any reports on Internal Control Testing of the Claims Processing System.
- 2.3.2.3.2.2.8 Obtain a listing of all related parties, including name, nature of relationship, services provided, and dollar amounts paid to or from the related party and any outstanding loans to or from the related party. In addition, obtain a listing of all related party arrangements for which the organization directly made payments to for clinical services performed for the year under review. If the amounts paid to the related party exceed the actual incurred clinical expense paid by the related party to the final service provider, verify that the MCO separately identified the dollar amounts for these types of expenses between incurred claims, healthcare quality improvement, administrative/non-claims, and profit or loss margin. (For more guidance on MCO requirements in this regard, the Contractor should refer to CMS Related Party Guidance section of the CMS Publication 15-1, Chapter 10, sections 1000, 1005, and 1010 for determining related party cost. These related parties may include hospitals, physicians groups, and other medical providers for which common ownership or control exists and meets the definitions of a related organization described in CMS Publication 15-1, Chapter 10.)
- 2.3.2.3.2.2.9 Obtain a brief description on how the related party delegated vendors and/or directly paid related organizations/providers are paid and expenses reported in the MCO's financial records (Ex. Percentage of Premiums, PMPM, Cost Plus, etc.).
- 2.3.2.3.2.2.10 Obtain a Claim Lag Report – The claim lag reports should reconcile to the incurred but not reported (IBNR) total reported within the MLR and HFMR. Also obtain the methodology utilized in calculating IBNR.
- 2.3.2.3.2.2.11 Obtain Board of Directors meeting minutes for the period of January through September of the audit year.
- 2.3.2.3.2.2.12 Obtain a copy of management agreements and any amendments to those agreements. Verify that this information includes, but is not limited to, financial statements, allocation schedules, and a working trial balance for the related party organization, including corporate information, for the time period under examination.
- 2.3.2.3.2.2.13 Obtain a copy of all contract agreements and amendments with third party or related party delegated vendors.
- 2.3.2.3.2.2.14 Obtain the completed Internal Control Questionnaire (ICQ) used by the MCO to assess issues related to the Medical Loss Ratio (MLR).

- 2.3.2.3.2.2.15 Obtain an organizational Chart.
- 2.3.2.3.2.2.16 Obtain policies and procedures that relate to Healthcare Quality Improvement (HCQI) administrative expenses, which may include direct expenses and/or allocations from the corporate office.
- 2.3.2.3.2.2.17 Obtain a listing of transactions that comprise administrative expenses. If the MCO has allocated administrative expenses to HCQI, verify that there is detailed support for the allocation methodology and amounts allocated.
- 2.3.2.3.2.2.18 Obtain a listing of all delegated vendors that arranged and coordinated clinical or HCQI services. Verify that the listing indicates whether each delegated vendor is a related party or an unrelated third party, as well as indicates ownership information. In addition, to obtain copies of all contracts and amendments for each delegated vendor. For PMPM arrangements with third party vendors, verify that the MCO provided the actual cost incurred by the third party vendor for providing clinical services or HCQI related services or a signed attestation statement with a claims summary table.
- 2.3.2.3.2.2.19 Obtain a listing of investments that account for 10% or greater of the investment balance on the financial statements.
- 2.3.2.3.2.2.20 Obtain documentation and calculations supporting the amount submitted online (vi) of the MLR as Income Taxes. In addition, obtain the MCO's Federal income tax returns for the previous calendar year. If the MCO participates in a tax sharing agreement with a parent company and its subsidiaries, to obtain the pro-forma tax returns specific to the MCO for the previous calendar year that shows the MCO's allocated share of taxes. Also, verify that the MCO provided a break down by line of business (Private, Medicare, Medicaid) and membership population.
- 2.3.2.3.2.2.21 Obtain the previous year's Annual Statement.
- 2.3.2.3.2.2.22 Obtain supporting detail for all amounts reported on the HFMR, including the regional and statewide reports.
- 2.3.2.3.2.2.23 Obtain a supporting schedule of earned premiums by month.
- 2.3.2.3.2.2.24 Obtain a supporting schedule for medical management expenses based on the National Association of Insurance Commissioners (NAIC) guidelines.
- 2.3.2.3.2.2.25 Obtain a supporting schedule for reinsurance premiums and recoveries.
- 2.3.2.3.2.2.26 Obtain supporting documentation for incentive payments.
- 2.3.2.3.2.2.27 Obtain supporting documentation for funds reimbursed by the Trauma Fund.

- 2.3.2.3.2.2.28 Obtain supporting documentation for payments to Federally Qualified Health Centers (FQHCs).
- 2.3.2.3.2.2.29 Obtain supporting documentation for the administrative portion of dental sub-capitated payments.
- 2.3.2.3.2.2.30 Obtain supporting documentation for RX rebates, including the amount related to Hepatitis C drugs.
- 2.3.2.3.2.2.31 Obtain supporting documentation for non-state plan services reported on the HFMR.
- 2.3.2.3.2.2.32 Obtain a copy of policies and procedures for cost-avoidance and post payment recoveries.
- 2.3.2.3.2.2.33 Obtain a copy of the quarterly Third-Party Liability (TPL) report submitted to MDH and supporting documentation to detail the submitted amounts. Verify the TPL report provides total TPL recovery amounts received for services provided during the audited fiscal year, collected during that calendar year and the total TPL recovery amount received for services provided during the audited fiscal year and collected through September 30 of the following calendar year.
- 2.3.2.3.2.2.34 Obtain supporting documentation for cost avoidance for the audited fiscal year.
- 2.3.2.3.2.2.35 Obtain supporting documentation to show where the Affordable Care Act (ACA) Fees are submitted on the HFMR.
- 2.3.2.3.2.2.36 Obtain supporting documentation for any Independent Review Organization (IRO) review fees paid. Support should include a detailed listing with supporting invoices for the two largest entries and where the expense was submitted.
- 2.3.2.3.2.2.37 Obtain supporting documentation for any dues paid to the Maryland MCO Association (MMCOA), any actuarial fees paid to Weekly Actuarial or any entity retained by MMCOA to dispute actuarial analyses prepared by the State and its contractors, or payments to any other entities specifically identified by the Contract Monitor and where the expense was submitted.
- 2.3.2.3.2.2.38 Identify if the MCO received any Patient Centered Medical Home Practices payments which relate to the audited calendar year. If so, the Contractor should identify if these payments were recorded as a pass-through or if the revenue/expense was recorded on the HFMR.
- 2.3.2.3.2.2.39 Obtain supporting documentation for the Pharmacy Expenses reported on Section III of the HFMR that were retained by the Pharmacy Benefits Manager (PBM).
- 2.3.2.3.2.2.40 Obtain the agreement between the MCO and its Pharmacy Benefits Manger (PBM)

2.3.2.3.2.2.41 Obtain documentation to support supplemental rebates retained by the PBM, if applicable.

2.3.2.3.2.3 As indicated below, various requirements in this RFP for performing MCO AUP Reviews will also apply for the Contractor's work in performing MLR examinations.

2.3.2.4 Reports/Notifications

(Although this section primarily applies to AUP Reviews, to the extent that the Contractor deems applicable, it can also report MLR Examination or DSH Audit issues as described in 2.3.2.4.2 and 3.)

The Contractor is to:

2.3.2.4.1 Prepare authoritative, objective reports that verify the accuracy and reasonableness of all information obtained by examining the records and other supporting evidence as set forth in Exhibits 2 and 4, to the extent it deems necessary in accordance with GAAS.

2.3.2.4.2 Prepare reports that include recommendations concerning the detection and correction of all improper, unallowable, or unusual costs. Depending on the Contractor's professional judgement as to the urgency of the noted findings in this regard, the Contractor shall submit its findings to the Contract Monitor in the manner and timeframe it deems appropriate. E.g., For what the Contractor judges to be serious violations of Program regulations and policies by a Provider, the Contractor might send an email notification to the Contract Monitor as soon as it is certain the violations are occurring. In non-urgent circumstances such findings might simply be reported at the same time and in the same manner as otherwise required. (See Sections 2.3.1.7.1 and 2.3.1.7.2.)

2.3.2.4.3 Within the timeframe judged appropriate by the Contractor (see Section 2.3.2.4.2) or as otherwise specified in this RFP, such as in Exhibit 5, advise the Contract Monitor of its findings or any other required data and furnish the Contractor Monitor all details and the basis for findings or data collections.

2.3.2.5 Review Timeframes for AUP Reviews and MLR Examinations

2.3.2.5.1 The Contractor shall complete all Medicaid Managed Care Organizations (MCOs) Agreed Upon Procedures Reviews and Medical Loss Ratio Examination Reports as required, but in no case later than April 15th for draft reports of each calendar year, from 5/1/2021 through 5/1/2025, 5/1/2027 if the renewal option is exercised, and May 1 of each calendar year for final reports, from 5/1/2021 through 5/1/2025, 5/1/2027 if the renewal option is exercised. Completion includes the issuing of draft and final reports after comments for each MCO, as well as a consolidated report of all the MCOs. (See the charts in Section 2.4.3 and Appendix 5.)

2.3.2.5.2 The Contractor shall not be held to time frames to complete particular Reviews/Examinations in circumstances that are beyond its control, such as:

- Records being held by the Attorney General's Fraud and Abuse Unit;
- Providers not making information available;
- Revisions to the applicable State/Federal laws and regulations that relate to Medical Assistance payments for services
- An MCO Provider that terminated participation in the Medical Assistance Program during the year and refuses to provide any requested expenditure or other financial information for the period when it was an MCO.

2.3.2.5.2.1 The Contractor shall document circumstances that severely hinder or preclude it from meeting one or more required timeframes and forward a written report of such to the Contract Monitor as explained in Sections 2.3.1.7.1 and 2

2.3.2.5.2.2 If the Contract Monitor accepts the described circumstances of a Provider not providing required information, the Contract Monitor, in his/her sole discretion, may approve a timeframe completion exception(s). In approving a timeframe exception, the Contract Monitor may stipulate a new timeframe by which the activity is to be completed.

2.3.2.5.2.3 Any timeframe exception will only apply to the immediate circumstance(s) that resulted in the exception. Thereafter, the Contractor shall try its utmost to return to listed timeframes as indicated in the schedule. (See also, Sections 2.3.1.7.1.B and 2.3.1.7.2.B)

2.3.2.5.3 The Contract Monitor may also approve a waiver of a timeframe if the Contractor is requested to perform extensive support functions, as described in Section 2.3.4 and/or some consulting activity, as described in Section 2.3.5, and the Contract Monitor accepts that the Contractor cannot reasonably perform the requested consulting or support activity and still meet all scheduled timeframes. In such circumstance, the provisions of Sections 2.3.2.5.2.2 and 2.3.2.5.2.3 will apply.

2.3.2.6 Payment for MCO AUP Review, MLR Examination and DSH Audit Activities

2.3.2.6.1 Tracking Staff Work Times

- A. As Contractor Personnel perform work related to MCO reviews, the Contractor should keep track of the actual time each person performs such work under the Contract in 15-minute increments. As described in Section 3.3.2 A, each month the Contractor may invoice for the cumulative value of such work. Each invoice should be itemized by the actual time worked by each individual, the individual's labor classification/category and the Contractor's Fully Loaded hourly rate for that labor classification/ category for each respective Contract Period as quoted on the B-3 Price Form in its Financial Proposal. There should also be a general narrative of what each individual worked-on and accomplished during the reported timeframe.
- B. All Contractor Personnel work times for MCO AUP Reviews should be kept separate from the worktimes expended on MLR Examinations, DSH

audits, Support Services or Special Projects. Due to the Not-to-Exceed MCO AUP Review Amount explained in Section 2.3.2.6.3, any work to complete MLR Examinations, DSH audits, Support Services or Special Projects should be invoiced under those activities, not as part of MCO AUP Review activities.

2.3.2.6.2 Payment Retainage/Holdback for MCO AUP Review, MLR Examination and DSH Audit Activities

- A. Ten (10) percent of each monthly invoice for MCO AUP Review activities will be retained or held back until all required AUP Review work for each respective MCO is accepted by the Contract Monitor as being completed.
- B. The purpose of this 10% invoice retainage is the help assure that each required MCO AUP Review is performed properly and timely. While it is recognized that it is appropriate to ensure the Contractor has adequate cash flow to sustain months of necessary component work under the Contract, such work does not have value until each respective MCO AUP Review is fully and satisfactorily completed. i.e., full payment will be made for completion, not merely effort.
- C. Subject to the limitation described in Section 2.3.2.6.3, once AUP Review work on each respective MCO is accepted in writing by the Contract Monitor, the Contractor may submit a separate invoice for the cumulative value of the 10% of each MCO related invoice that was retained during each Contract Period.

2.3.2.6.3 Not-to-Exceed Limitation for MCO AUP Review, MLR Examination and DSH Activities

- A. As described in the B-2 instructions for the Attachment B-3 Price Form, the Not-to Exceed Price per MCO AUP Review, separate Not-to Exceed Price per MLR Examination or separate Not-to Exceed Price per DSH Audit for each respective Contract Period is the maximum price the Contractor will be paid to complete each MCO AUP Review, MLR Examination or DSH Audit, as appropriate. As described in Sections 2.3.2.6.1 and 3.3.2, the Contractor may submit monthly invoices for the work performed by Contractor Personnel concerning each respective MCO AUP Review, MLR Examination or DSH Audit, as appropriate. Subject to the 10% retainage described in Section 2.3.2.6.2, payment will be made for all properly documented work by Contractor Personnel, as long as the cumulative value of all invoices for each respective MCO AUP Review, MLR Examination or DSH Audit, as appropriate, is equal-

to or less than the Not-to-Exceed MCO AUP Review, MLR Examination or DSH Audit Amount, as appropriate.

- B. If the Not-to-Exceed MCO AUP Review, MLR Examination or DSH Audit Amount, as appropriate, is reached for the Review of a given MCO or DSH in any Contract Period, the Contractor will not be paid for any additional work on that particular Review/Examination/Audit, including not paid any retainage amount if such payment would result in the Contractor receiving more than its Not-to-Exceed MCO AUP Review, MLR Examination or DSH Audit Amount, as appropriate.
- C. If the Contractor reaches its Not-to-Exceed MCO AUP Review, MLR Examination or DSH Audit Amount for any given MCO Review/Examination or DSH Audit in any given Contract Period, the Contractor must still complete the AUP Review, MLR Examination or DSH Audit, as appropriate, properly and timely, despite not receiving additional payment to do so.

2.3.2.6.4 Adherence to Staff Mix Percentages for MCO AUP Review, MLR Examination or DSH Audit Activities

2.3.2.6.4.1 Requirement

- A. The Contractor shall maintain the hourly “staff mix” percentage for Medicaid Managed Care Organizations (MCOs) Agreed Upon Procedures Review, MLR Examination, or DSH Audit, as appropriate, for each Contract Period as proposed in the Financial Proposal Form Attachment B-3, except for the Auditor Intern level as explained in 2.3.2.6.4.2.B. The hourly staff mix percentage shall be based on the hours proposed in the Attachment B-3 Financial Proposal Form, for each of the six (6) below listed labor classifications for each Contract Period (The requirements for each labor classification are described in Section 3.10.3):
 - a. Audit Manager
 - b. Supervising Auditor
 - c. Senior Auditor
 - d. Junior Auditor
 - e. Entry Level Auditor
 - f. Auditor Intern
- B. As described in the Attachment B-2 instructions, the Contract Monitor will utilize an hourly staff mix percentage for each classification, (classification hours divided by total hours) to compare to the Contractor’s hourly billing for Reviews/Examinations/Audits to ensure compliance with the hourly staff mix.
- C. It is understood that throughout the course of a given Review/Examination/Audit that various labor classifications might be used at different levels than the overall required staff mix. For instance, junior and entry level auditors might be used predominantly in the first several months of a Review Period, whereas the audit manager and supervising auditors might predominantly be used during the draft and final Review stages.

Nonetheless, as of the acceptance of a given AUP Review, MLR Examination or DSH Audit, as appropriate, by the Contract Monitor, the final invoice for that AUP Review, MLR Examination or DSH Audit, as appropriate, should be adjusted by the Contractor to reflect the required staff mix.

- D. If the Contractor does not adjust its final invoice for a given AUP Review, MLR Examination or DSH Audit, as appropriate, to conform to its appropriate staff mix, the Contract Monitor will adjust the final monthly billing for the relevant Contract Period to ensure the Contractor adheres to the required staff mix.
- E. Although the Contract Manager may directly work on any AUP Review, MLR Examination, DSH audit, Support Services or Special Project, as described in Section 2.3.6, such work is not separately billable and does not factor into the Staff Mix calculations.

2.3.2.6.4.2 Adjustment Procedure

- A. As described in Sections 2.3.2.6.4.4.1 and 2, the Contractor is to provide both monthly invoicing and a cumulative Contract Period-to-Date summary of all work performed for each required MCO AUP Review, MLR Examination or DSH Audit, as appropriate. As per the example provided in Section 2.3.2.6.4.3, the Staff Mix for this respective Contract Period is to be 10% for Audit Manager, 10% for Supervising Auditor, 25% for Senior Auditor, 30% for Junior Auditors, 20% for Entry Level Auditors and 5% for Auditor Interns.
- B. The Contractor will be paid for all Labor Classifications – as described in Section 2.3.2.6.2, at the 90% level - until it reaches its projected not-to-exceed number of hours per MCO AUP Review, MLR Examination or DSH Audit, as appropriate. In the example in Section 2.3.2.6.4.3, the Contractor on its Price Form projected completing an MCO AUP Review, MLR Examination or DSH Audit, as appropriate, with no more than 1,000 total hours of effort, broken-down with various staff mix, including no more than 100 hours for an Audit Manager. The Contractor will be paid for all invoices for Audit Manager until it reaches its 100 hours level. If the Contractor continues to use an Audit Manager to complete a given AUP Review, MLR Examination or DSH Audit, as appropriate, beyond the 100-hour limit, the hours in excess of 100 will be paid at the next lower Labor Classification that has not been exceeded. If the Contractor reached its 100 hour limit for Audit Manager in the 9th month of a Contract Period but used 20 hours of Audit Manager labor in the 10th month of that Contract Period, it would report that it used the 20 hours of Audit Manager labor, but could only invoice the hourly rate for a Supervising Auditor for those 20 hours, assuming the 100 hours of Supervising Auditor had not yet been billed. If the 100 hours of Supervising Auditor had already been invoiced, the billing would have to be at the Senior Auditor level, provided those 250 hours had not been provided. This payment at a reduced classification level would continue all the way down to the Auditor Intern level if all hours for higher classification levels had been reached. Because of this rolling adjustment in the invoicing for the various Labor Classifications, the Auditor Intern level is the only Labor Classification that may end up being invoiced for more hours than indicated on the Attachment B-3 Price Form, as long as the total number of hours

projected to be used to complete an MCO AUP Review, MLR Examination or DSH Audit, as appropriate, has not been exceeded.

- C. In accordance with Section 2.3.2.6.3, however, if 1,000 hours of total labor effort is reached, thereafter the Contractor would not be paid for any additional effort. It would continue to provide its monthly report of labor hours worked but cannot invoice for any effort over 1,000 hours.
- D. Conversely, if the Contractor completed an AUP Review, MLR Examination or DSH Audit, as appropriate, with less than 1,000 hours of total effort, it would be paid for all hours worked, and possibly for all hours worked at the original billing rates. As described above, once a higher number of hours of a given labor classification was worked, payment would be adjusted to a lower labor classification rate. The objective of this is that the not-to-exceed rate for the AUP Review MLR Examination or DSH Audit, as appropriate, is not exceeded. However, if the Contractor completes a given AUP Review, MLR Examination or DSH Audit, as appropriate, for less than its not-to-exceed amount, it will be paid for all hours actually worked at the actual labor classification up to the not-to-exceed amount. E.g., if the Contractor projected a total AUP Review, MLR Examination or DSH Audit, as appropriate, charge of \$150,000 for 1,000 hours of effort at the various staff mix rates, as long as a given AUP Review or MLR Examination, as appropriate, is finally accepted as being properly completed, the Contractor will be paid for all hours actually worked at the actual rates quoted on the Price Form. In no event, however, will the Contractor be paid more than \$150,000.

2.3.2.6.4.3 Illustration/Example

As an example, as an Offeror the Contractor might have proposed a total of 1,000 hours to complete an AUP Review, MLR Examination or DSH Audit. Within these 1,000 hours, the proposed labor classification mix might have been:

Audit Manager- 100 hours
Supervising Auditors - 100 hours;
Senior Auditors - 250 hours;
Junior Auditors - 300 hours;
Entry Level Auditors - 200 hours; and,
Auditor Interns - 50 hours.
(100 + 100 + 250 + 300 + 200 + 50 = 1,000 hours.)

These numbers convert to these percentages of the hours (Staff Mix Percentage) to produce an AUP Review, MLR Examination or DSH Audit:

Audit Manager – 10%
Supervising Auditors - 10%;
Senior Auditors - 25%;
Junior Auditors - 30%;
Entry Level Auditors - 20%; and,
Auditor Interns - 5%.
(10 + 10+ 25+ 30 + 20 + 5 = 100%)

2.3.2.6.4.4 Invoice Breakdown and Running Total Report
(Also see Section 3.3 on Invoicing)

2.3.2.6.4.4.1 Monthly Invoice Breakdown

The MCO AUP Review, MLR Examination or DSH Audit portion of each monthly invoice must be broken-down and summarized by each individual MCO AUP Review, MLR Examination or DSH Audit, as appropriate, as follows:

1. The name(s) of all Contractor staff other than the Contract Manager who worked on a given AUP Review during the month being invoiced and the actual number of hours each staff worked on each MCO AUP Review, broken-down in 15-minute increments as described in Section 3.3.2, A.
2. The appropriate Labor Classification of each Contractor staff identified in item 1, above.
3. If not previously provided, substantiation that each individual meets the requirements for his/her identified Labor Classification
4. The total number of hours worked during the month on each respective MCO AUP Review, MLR Examination or DSH Audit, as appropriate, by each respective labor classification and in total by all Labor Classifications.
5. If the Staff Mix Percentage for any given Labor Classification other than Auditor Intern has been attained, the number of hours invoiced at one or more lower Labor Classifications.

2.3.2.6.4.4.2 Cumulative, Period-to-Date Breakdown

Aside from the actual invoice for the work performed during a given month, there must be a cumulative, Contract Period-to-Date total broken down the same way.

2.3.2.6.4.4.3 Assessment of Stage of Completion

The Contractor must provide its assessment of the progress of each MOU AUP Review, MLR Examination, DSH Audit, Special Project, etc. i.e., the Contractor must describe its assessed level of completion of each MCO AUP Review, MLR Examination, DSH Audit, Special Project, etc., and its projection of whether all required work activities will be completed within the required timeframe and quality level. This assessment must be consistent with the level of completion assessment portion of the monthly Progress Reports or Special Reports described in Sections 2.3.1.7.1 and 2.3.1.7.2.

2.3.2.6.4.4.4 Need for Corrective Action Plan

As described in Section 2.3.1.7.1.B. i, if the Contractor indicates that it is behind schedule in the completion of any work activity, or if the Contract Monitor determines the Contractor is behind schedule despite the Contractor not so indicating, the Contract Monitor may direct the Contractor to implement a Corrective Action Plan, as described in Section 2.5.

2.3.2.6.4.4.5 Examples of Invoice Breakdown

- A. If a given junior auditor worked 160 hours in a particular month, this total must be broken down by each MCO AUP Review and any other activity the auditor worked on. For instance, 50 total hours might have been devoted to MCO AUP Review A, 20 hours to MCO AUP Review B, 30 hours to MCO AUP Review C, 30 hours to MCO AUP Review D and 30 hours for a Special Project.
- B. A 2nd junior auditor might also have worked 160 hours in this month, as follows:

- 100 hours on AUP Review A, 40 hours on AUP Review B and 20 hours on AUP Review C.
- C. A senior auditor might have worked 100 hours during the month on this Contract, as follows: 35 hours on AUP Review A, 25 hours on AUP Review B, 15 hours on AUP Review C, 15 hours on AUP Review D and 10 hours on AUP Review E.
- D. A supervising auditor may have worked 30 hours on this Contract during the month, 20 hours on AUP Review A and 10 hours on AUP Review B.
- E. An entry level auditor might have worked 40 hours during the month on this Contract, 20 hours on AUP Review A and 20 hours on AUP Review B.
- F. The monthly report and invoice for the month would reflect:
1. The specific hours worked by each individual under the Contract.
 2. The total number of hours spent on each MCO AUP Review or other activity by all persons working under the Contract.
- For instance, using the above example, in addition to the 160, 160, 100, 30 and 40 hours worked by each respective person (= 490 total work hours), the monthly report would indicate:
- 225 hours devoted to MCO AUP Review A (50 + 100 + 35 + 20 + 20 = 225);
115 hours devoted to MCO AUP Review B (20 + 40 + 25 + 10 + 20 = 115)
65 hours devoted to MCO AUP Review C (30 + 20 + 15 = 65);
45 hours devoted to MCO AUP Review D (30 + 15 = 45);
10 hours devoted to MCO AUP Review E
30 hours on a Special Project

490 total hours worked during the month.

3. The total number of hours spent on each audit or other activity by labor classification.
MCO AUP Review A – 150 hours by junior auditors; 35 hours by senior auditor; 20 hours by supervising auditor; 20 hours by entry level auditor = 225 hours
MCO AUP Review B – 60 hours by junior auditors; 25 hours by senior auditor; 10 hours by supervising auditor; 20 hours by entry level auditor = 115 hours
MCO AUP Review C - 50 hours by junior auditors; 15 hours by senior auditor = 65 hours
MCO AUP Review D - 30 hours by junior auditors; 15 hours by senior auditor; = 45 hours
MCO AUP Review E - 10 hours by supervising auditor
Special Project – 30 hours by junior auditor.

490 hours worked during the month

2.3.2.7. Additional invoicing details are contained in Section 3.3.

2.3.2.8 Liquidated Damages

If the Contractor fails to properly complete any MCO AUP Review in the manner or timeframe required, unless as described in Section 3.4.1.3, the failure is due to circumstances beyond the control of the Contractor, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Items # 17 through 20.

2.3.3 Disproportionate Share Hospital Audits

2.3.3.1 Required DSH Review Components

The Contractor shall perform an independent audit of Disproportionate Share Hospital (DSH) payments for all DSHs in Maryland in each year of the Contract. These audits are required under a change to Code of Federal Regulations (CFR) 42, Parts 447 and 455, effective 1/19/2009. An audit is required each year of hospitals that qualified for payments under Maryland's DSH requirement. A draft report is due to the Medical Assistance Program by November 30st of each Contract Period and a final report is due to the Centers for Medicare & Medicaid Services by the following January 31st. A list of the minimum verifications needed is contained in Exhibit 6. The DSH audit requirements are also spelled out in detail at the web site <https://www.law.cornell.edu/cfr/text/42/455.304>

As of the date of issue of the RFP there are 31 (including State Hospital Centers) DSH hospitals in Maryland. However, this number could increase or decrease during each Contract Period.

2.3.3.2 Payment for DSH Audit Activities

All aspects related to payment for DSH audit activities will be exactly the same as described in Section 2.3.2.6.

2.3.3.3 Staff Mix Requirement

The same Staff Mix requirements as described in Section 2.3.2.6.4 apply to DSH audits as well as to MCO Agreed Upon Procedure Reviews.

2.3.3.4 Liquidated Damages

If the Contractor fails to properly complete any DSH draft or final, individual or consolidated audit in the manner or timeframe required, unless as described in Section 2.3.2.5.2 the failure is due to circumstances beyond the control of the Contractor, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Items # 21, 22 and 23.

2.3.4 Support Services

2.3.4.1 Support for Appeals

2.3.4.1.1 During the Contract Term

During the term of the Contract the Contractor shall cooperate and assist in the preparation for, and defense of, administrative hearings or civil litigation arising under the Contract that relates to the Contractor's performance of MCO AUP Reviews, MLR Examinations and related accounting services and DSH audits, including but not limited to providing documents and staff to consult with Department legal staff and/or appear as witnesses.

2.3.4.1.1.1 Provision of Documents in Support of Appeals

- a. All documents and/or reasonably available information requested by the Contract Monitor or Department legal staff to defend the Program against appeals filed by Providers concerning the Contractor's work under this Contract shall be provided as expeditiously as possible.
- b. To the extent that required documents and/or information are already in the possession of the Department, as directed by the Contract Monitor the Contractor may either identify the documents and/or information with such specificity that the Department may readily access its own copies or provide the documents and/or information again, notwithstanding that the documents and/or information had previously been provided to the Department.

- c. The Contractor will not be paid for any effort by its staff to identify or provide any documents and/or information concerning the Contractor's work under the Contract.
- d. The failure of the Contractor to provide requested documents and/or information to assist with the defense against a Provider appeal in a timely manner will result in the imposition of Liquidated Damages as per Section 3.4 and Attachment P, LD Item # 24.

2.3.4.1.1.2 Provision of Contractor Staff in Support of Appeals

- a. Except as described under Section 2.3.4.1.1 2. c, below, appropriate Contractor staff shall attend meetings in person to assist with the preparation of a defense at administrative hearings or other legal proceedings. Typically, such in-person meetings would occur at the State Preston Street complex. (E.g., at 201, 300 or 301 W. Preston St.), the Offices of the Attorney General at 200 St Paul Place in Baltimore, or other location(s) in the Baltimore area.
- b. If required by Department legal staff, appropriate Contractor staff shall provide depositions concerning their work under the Contract. Any such deposition could take place at the Contractor's office or any location identified in Section 2.3.4.1.1.2 a.
- c. With the approval of the Contract Monitor or Department legal staff, consultation with Contractor staff, including potential witnesses at hearings or other legal proceedings, may take place via teleconference or video conferencing.
- d. If required by Department legal staff, appropriate Contractor staff shall appear as witnesses in administrative hearings or other legal proceedings to provide testimony concerning their work under the Contract. The location of any such legal proceeding usually would occur at the Maryland Office of Administrative Hearings in Lutherville, Md., but could take place at any court location in Maryland.
- e. The Contractor will be paid for participation by its staff in meetings with Department legal staff to prepare a defense for an appeal, for providing depositions or for appearing as witnesses at administrative hearings or other legal proceedings.
 - i. The Contract Monitor or Department legal staff must approve the actual individuals participating in such activities.
 - ii. The Contractor will be paid in 15-minute increments, as described in Section 3.3.2.A and at the then current rate for the appropriate Labor Classification for each approved individual.
 - iii. The Contractor will not be paid for any non-mileage expenses (tolls, parking, meals, lodging, etc.) for any meeting or other proceeding that occurs anywhere in Maryland.
 - iv. The Contractor will not be paid for any mileage expenses for any meeting or other proceeding that occurs within 25 miles of 201 W. Preston St. in Baltimore.
 - v. Beyond a 25-mile radius from 201 W. Preston St. in Baltimore the Contractor may invoice for mileage at the rate paid to Maryland State employees. In such

event the first 25 miles is still not billable. Only the mileage in excess of 25 miles is billable.

- f. The Failure of the Contractor to provide staff to consult with Department legal staff or witnesses in legal proceedings during the Contract term will result in Liquidated Damages as described in Section 3.4 and LD Item # 25 on Attachment P.

2.3.4.1.1.3. Provision of Documents to Appellant

- a. At reasonable times the Contractor shall allow a Provider that has filed an Appeal based upon work performed by the Contractor and/or the Provider's representative to review Contractor data used in the Appeal process. The Contractor must also provide adequate office space at the Contractor's offices and any necessary material, including computers, so that the Provider and/or its representative can properly review Appeal related material possessed by the Contractor.
 - i. In the case of sensitive information, as determined by Department legal staff, the Contractor shall provide redacted documents with all sensitive information removed. The redaction of the documents will be performed by Department legal staff.
 - ii. If the Contract Monitor or Department legal staff informs the Contractor that the Appellant or its legal representative(s) has entered into a confidentiality agreement with the Department, all requested information shall be provided by the Contractor unredacted.
 - iii. The Contractor will not be paid for providing electronic copies of documents to an appellant or its legal representative or to permit an appellant or its legal representative to use Contractor space and materials to review such documents.
- b. The Failure of the Contractor to provide required data, space, materials, computer, etc., to an appellant or its legal representative during the Contract term will result in Liquidated Damages as described in Section 3.4 and LD Item # 26 on Attachment P.

2.3.4.1.2 After the Term of the Contract

While Appeals rarely occur after the Contract has ended, if such appeals do occur, for the duration of time specified in Section 2.3.1.11.5, the Contractor must still provide required support to the Department to defend against an appeal and must also provide certain documents to an appellant.

2.3.4.1.2.1 Concerning providing support to the Department, all the provisions of Section 2.3.4.1.1.1 and 2.3.4.1.1.2 also apply after the end of the Contract term except for the Liquidated Damages provisions in 2.3.4.1.1.1 d and 2.3.4.1.1.2 f.

2.3.4.1.2.2 Concerning providing documents to an appellant, upon request from the Contract Monitor or Department legal staff, the Contractor shall provide the Provider appellant or its legal representative with electronic copies of pertinent documents

- A. In the case of sensitive information, as determined by Department legal staff, the Contractor shall provide redacted documents with all sensitive information removed. The redaction of the documents will be performed by Department legal staff.

- B. If the Contract Monitor or Department legal staff informs the Contractor that the Provider appellant or its legal representative(s) has entered into a confidentiality agreement with the Department, all requested information shall be provided by the Contractor unredacted.
- C. The Contractor will not be paid for providing electronic copies of documents to an appellant or its legal representative.

2.3.4.2 Other Support Services:

2.3.4.2.1 PIA Requests

The Contractor shall, as directed by the Contract Monitor, provide support to the Department in responding to requests for records pursuant to the Public Information Act (PIA) (General Provision Article, §§4-101 to 4-601)

To the extent required to respond to a particular PIA request, this support shall include:

- a) Conducting a search of records held by the Contractor to identify records responsive to the request;
- b) Identification of the confidentiality status of the records, if known;
- c) Estimating the cost of producing the records in accordance with the Department's PIA fee provisions as set forth in COMAR 10.01.08.04;
- d) Provision of above information to the Contract Monitor in the time frame defined by the Contract Monitor; and
- e) As directed by the Contract Monitor, providing the Contract Monitor with records to be evaluated for release by the Department in response to the PIA request.

2.3.4.2.1.2 The expectation is that most work by Contractor staff in support of PIA requests will be performed by general administrative support type personnel with perhaps minimal usage of staff in one of the six (6) identified Labor Classifications. However, instead of having Offerors try to break-down PIA request work by the number of hours estimated to be worked by each Labor Classification, as indicated on the Attachment B-3 Price Form Offerors are to only quote a single hourly rate for all PIA request support work. Invoicing for PIA request support work shall be at this single labor hours amount times the actual number of hours performed by any Contractor staff regardless of Labor Classification. As indicated in Sections 2.3.4.2.4 and 3.3, the Contractor will be required to submit supporting documentation for all hours invoiced for PIA request support.

2.3.4.2.1.3 The failure of the Contractor to provide required information in response to a PIA request within the timeframe specified by the Contract Monitor will result in Liquidated Damages as described in Section 3.4 and LD Item # 27 on Attachment P.

2.3.4.2.2 Projected Impact of Policy Changes

The Contractor shall provide examples of how AICPA would interpret potential Medicaid policy changes in terms of GAAP.

The Failure of the Contractor to provide required examples of possible AICPA interpretations of potential Medicaid policy changes within the required timeframe will result in Liquidated Damages as described in Section 3.4 and LD Item # 28 on Attachment P.

2.3.4.2.3 Other Support

The Contract Monitor may request the Contractor to provide any other type of Support the Contract Monitor deems to be within the scope of the Contract but not covered by any other Contract provision.

2.3.4.2.4 Payment for Support Activities

- A. Any Support activity requested by the Contract Monitor and performed by the Contractor is billable by the Contractor on an hourly rate basis. In performing the requested Support, the Contractor must record the time involvement of each of its staff, by date, time expenditure, labor category except for PIA request work, and nature of the work performed. i.e., for each of its staff that performed a given Support activity; the Contractor must provide the following identifying personal information or work activity description:
1. The person's name
 2. The person's labor category, except for PIA request work for which only a single hourly labor rate is paid. (See Section 2.3.4.2.1 for instructions on payments for PIA request work.)
 3. Each day (date) each staff worked on this Support activity
 4. The general hours on each day that each person worked on a given Support activity and a total hour's summation by person, by day, by activity
- B. The Contractor may invoice for all such Support activity in quarter hour increments, as described in Section 3.3.2.

2.3.5 Special Projects

In addition to the requirements in Section 2.3.1-2.3.4, the Contractor shall perform special reviews, audits, other accounting and auditing functions, and provide other assistance that the Department may require throughout the term of the Contract. As a need arises, the details of a specific activity and any associated deadline - often there is time urgency for the completion of a special project - will be identified by the Contract Monitor in writing for the Contractor.

2.3.5.1 Non-Urgent Projects

For a project the Contract Monitor does not designate for urgent completion, within five (5) Business Days of receipt of this assignment notification, the Contractor is requested to submit to the Contract Monitor a proposed plan, in writing, detailing when it anticipates completing the project and the estimated hours and Labor Classifications to be used to complete the project assignment and how this number and type of Labor Classification hours should be sufficient to complete the project within the indicated timeframe. The Contractor should also indicate how it can complete the required activity

within the stated timeframe without any significant negative impact on completing the primary Contract activities described in Sections 2.3.2 and 2.3.3.

2.3.5.2 Urgent Projects

For a project that the Contract Monitor designates for urgent completion, the Contract Monitor will provide the date by which the project is to be completed. Within two (2) Business Days of receipt of this assignment notification, the Contractor is requested to submit to the Contract Monitor a proposed plan, in writing, detailing the estimated hours and Labor Classifications to be used in completion of the special project assignment and how this number and type of Labor Classification hours should be sufficient to complete the project within the indicated timeframe. The Contractor should also indicate how it can complete the required activity within the required timeframe without any significant negative impact on completing the primary Contract activities described in Sections 2.3.2 and 2.3.3.

2.3.5.3 Staff Mix Requirements

For Special Projects the same Staff Mix rules as described in Section 2.3.2.6.4 will apply. This means that when submitting a plan, the Contractor must breakdown the plan by the total number of hours needed to complete the Project and the number of hours of each Labor Classification. From these numbers the Staff Mix (staff percentages) will be calculated.

2.3.5.4 Project Plan Revisions

For either a non-urgent or urgent Special Project (2.3.5.1 and 2.3.5.2), the Contract Monitor may require the Contractor to revise its proposed work plan. Revisions requested by the Contract Monitor shall be submitted within one (1) Business Day of request for an urgent situation and two (2) Business Days for a non-urgent situation.

2.3.5.5 Required Approval

The Contractor may not proceed to work on the Special Project assignment unless and until the Contract Monitor has granted written approval of the Contractor's proposed Special Project plan.

2.3.5.6 Historically, special projects total about 500 hours per Period. For this reason, on the Attachment B-3 Price Form 500 hours has been allocated for Special Projects. However, 500 hours is neither a guaranteed minimum nor maximum number of hours. The actual number of Special Project hours in any Period of the Contract can vary from none to more than 500.

2.3.5.7 Payment for Special Projects Activities

The labor hours actually worked on a special project shall be paid at the rate quoted by the Contractor on its Attachment B-3 Price Form (Financial Proposal) for each respective Period of the Contract and each respective Labor Classification type

- A. Any Special Project activity requested by the Contract Monitor and performed by the Contractor is billable by the Contractor on an hourly rate basis. In performing the requested Special Project, the Contractor must record the time involvement of each of its staff, by date, time expenditure, Labor Classification and nature of the work performed. i.e., for each of its staff that performed a given Support activity; the Contractor must provide the following identifying personal information or work activity description:
 - i. The person's name

- ii. The person's Labor Classification
 - iii. Each day (date) each staff worked on this Support activity
 - iv. The general hours on each day that each person worked on a given Special Project activity and a total hour's summation by person, by day, by activity
- B. The Contractor may invoice for all such Special Projects activity in quarter hour increments, as described in Section 3.3.2.
- C. The actual billings for each Special Project must comply with the Staff Mix as originally planned and described in Section 2.3.5.3.

2.3.5.8 Liquidated Damages

If the Contractor fails to properly complete any Special Project in the manner or timeframe required, unless as described in Section 2.3.2.5.2 the failure is due to circumstances beyond the control of the Contractor, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 29.

2.3.6 Contractor Contract Manager and Backups

- 2.3.6.1 The Contractor must have a single individual designated as the Contractor's Contract Manager to oversee all aspects of the Contract. The person holding the Contract Manager position must possess the education and experience as described in Section 3.10.3.
- A. The Contractor Contract Manager will be responsible for the proper performance of the Contract by the Contractor and its employees and agents. This position must serve as the primary point of contact between the Department Contract Monitor and the Contractor and is to be primarily responsible for the operational aspects of the Contract from the Contractor's perspective.
 - B. The Contract Manager should attend all monthly or other meetings, submit monthly or other reports, draft and final MCO AUP Reviews, MLR Examinations and DSH Audits, plans for Special Projects, invoices, and in general act as the primary point of contact for the Contract Monitor concerning the Contract.
 - C. If at any time during the Contract term the Contract Manager position becomes vacant, as per Section 3.11, Substitution of Personnel, the position must be filled with a person acceptable to the Contract Monitor.
 - D. Current contact information for the Contract Manager must be provided to the Contract Monitor no later than two (2) Business Days after the Contract Commencement Date (See Appendix 1 definition.), and must be maintained throughout the Contract including if there is a change in who holds this position. "Current contact information" means email address, office phone number and cell phone number.
 - E. If the Contractor fails to provide a Contract Manager as described in this Section, unless as described in Section 2.3.2.5.2 the failure is due to circumstances beyond the control of the Contractor, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 30.

- 2.3.6.2 The Contractor can also designate from one (1) to three (3) Backups for the Contract Manager. Backups may perform the duties of the Contract Manager or serve as points of contact for the Contract Monitor when the Contract Manager is on vacation, is sick, is performing other duties for the Contractor or if the position is vacant. Current Contact Information (email address and office and cell phone numbers) for each Backup must be provided at the same time as official notification from the Contractor is provided to the Contract Monitor that a specific individual is serving in a Backup capacity.
- 2.3.6.3 Neither the Contract Manager nor any Backup is required to be dedicated to working under the Contract. In addition., the Contract Manager and Backups may perform other functions under the Contract, such as serving as an Audit Manager or Supervisor Auditor, as further described in Section 2.3.6.6.
- 2.3.6.4 Communications from the Contract Monitor, including designees of the Contract Monitor or Department legal staff, should be responded to by either the Contract Manager or a designated Backup by the end of the same Business Day if contact is made by 2 PM on a given Business Day, or by 10 AM on the next Business Day if contact is made after 2 PM on a given Business Day.
- 2.3.6.4.1 If any communication from the Contract Monitor is designated as being “Urgent” the Contract Manager or Backup shall respond within 2 hours or by 9 am the next Business Day for communications received after 4 pm on a given Business Day.
- 2.3.6.4.2 If a communication is designated as being “Critical” it must be responded to within 90 minutes.
- 2.3.6.4.3 If the Contractor fails to respond to communications from the Contract Monitor as required in this Section, unless as described in Section 2.3.2.5.2 the failure is due to circumstances beyond the control of the Contractor, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 31.
- 2.3.6.5 As indicated on the Price Form, Attachment B-3, Offerors are to quote a firm fixed Annual Administrative Fee to cover all administrative aspects of the Contract, such as, but not limited to the Contract Manager and other personnel attending required monthly meeting, the submission of monthly reports, providing required reports on MBE activities, creating and maintaining required databases, abiding by all data security requirements and submitting invoices and any required supporting documentation. The Contractor may not separately invoice for any administrative activities, including any of the activities of the Contract Manager or Backups, for performing Contract administrative activities.
- A. As described in Section 3.3.2 C, each month the Contractor may invoice 1/12th of its Annual Administrative Fee for each respective Contract Period, less the 10% withholding described in Section 2.3.2.6.2.
- B. Many, if not most, of the administrative activities to be covered by the Fixed Annual Administrative Fee also have associated Liquidated Damages if they are not performed or not timely performed. Any applicable liquidated damages would be deducted from the Administrative Fee before it is paid.

- 2.3.6.6 The contractor may separately invoice for work performed by the Contract Manager or Backups for non-administrative activities; e.g., for performing direct work on MCO AUP Reviews, MLR Examinations, DSH Audits, Support Services or Special Projects.

In invoicing for hourly work performed by the Contract Manager or Backups:

- A. Documentation must have been submitted and accepted by the Contract Monitor that the Contract Manager or others being invoiced meet the education and experience requirements for the Labor Classification being invoiced.
- B. The Labor Classification being invoiced must not have already been invoiced up to the maximum level for that Classification, as per the Staff Mix limitations described in Section 2.3.2.6.4 (If the approved Labor Classification for which the person being invoiced has been exhausted, the invoicing may be for a lower Labor Classification, if any, for which the maximum allowable number of hours has not been exhausted.)
- C. The specific non-administrative work for which the invoice is being submitted must be described in detail.
 - i. The specific MCO AUP Review(s), MLR Examination(s), DSH Audit(s), Support Service or Special Project worked on.
 - ii. The specific Review, Examination, Audit, etc., activity(ies) performed.
 - iii. The specific days and approximate hours of the day when the work was performed.

Since as per Sections 2.3.2.6.1 and 2.3.2.6.4.4, the Contract Manager must submit a monthly report of his/her activities under the Contract, it must be clear from that report that the Contract Manager was not performing administrative activities during any portion of the time for which separate, non-administrative work is being invoiced.

- 2.3.6.7 When all audit and other work for each Contract Period has been completed, the Contractor may separately submit an invoice for the 10% withholding.

2.4 Deliverable Submission

- A. For every deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- B. For every deliverable, the Contractor shall submit to the Contract Monitor, by e-mail or hard copy, notifications and the deliverable in Microsoft Word or other format, acceptable to the Contract Monitor.
- C. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. See Appendix 5 – MCO and DSH Events Schedule.

2.4.1 Deliverable Acceptance

- A. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in Section 2.4.2 Deliverable Descriptions/Acceptance Criteria.
- D. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contractor is responsible for coordinating comments and input from various team members and stakeholders.

- E. In the event of rejection, the Contract Monitor will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

2.4.2 Minimum Deliverable Quality

The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.

Each deliverable shall meet the following minimum acceptance criteria:

- A. Be presented in a format appropriate for the subject matter and depth of discussion.
- B. Be organized in a manner that presents a logical flow of the deliverable's content.
- C. Represent factual information reasonably expected to have been known at the time of submittal.
- D. In each section of the deliverable, include only information relevant to that section of the deliverable.
- E. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- F. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
- G. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.
- H. Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.
- I. A draft written deliverable may contain limited structural errors such as incorrect punctuation and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.

2.4.3 Major Deliverables Descriptions/Acceptance Criteria

(Deliverables Summary Table in Chronological Order*)

(The Deliverables Summary Table does not list every contractually required deliverable. Offerors should read the RFP thoroughly for all Contract requirements and deliverables. Also see Appendix 5.-MCO and DSH Events Schedule.)

(*Assumes a Contract NTP (Start) Date of October 1, 2021.)

| ID # | Deliverable Description | Acceptance Criteria | Due Date / Frequency |
|-------------------------|---|---|--|
| MCO DELIVERABLES | | | |
| 1 | Draft MCO Report to Contract Monitor | Microsoft Word in standard report format and PDF; (i.e., binder(s); portfolio(s)); Hard and Electronic Copies | April 15 th Each Year (2021-2026); (2027 if option exercised) |
| 2 | Draft MCO Medicaid MLR Examination Reports | Microsoft Word in standard report format and PDF; (i.e., binder(s); portfolio(s)); Hard and Electronic Copies | April 15 th Each Year (2021-2026); (2027 if option exercised) |
| 3 | Annual Consolidated and Individual MCO Medicaid Audit Reports | Microsoft Word in standard report format and PDF; (i.e., binder(s); portfolio(s)); Hard and Electronic Copies | May 1 st Each Period (2021-2026); (2027 if option exercised) |
| 4 | Annual consolidated and Individual MCO Medicaid MLR Examination Reports | Microsoft Word in standard report format and PDF; (i.e., binder(s); portfolio(s)); Hard and Electronic Copies | May 1 st Each Year (2021-2026); (2027 if option exercised) |

| | | | |
|-------------------------|--|---|--|
| DSH DELIVERABLES | | | |
| 1 | Draft Annual DSH Audit Report to Dept. | Microsoft Word in standard report format and PDF; Hard and Electronic Copies | November 30 th Each Year (2021-2026); (2027 if option exercised) |
| 2 | Final Annual DSH Audit Report to Dept. | Microsoft Word in standard report format and PDF; (i.e., binder(s); portfolio(s)); Hard and Electronic Copies | December 31 st Each YearPeriod (2021-2026); (2027 if option exercised) |
| 3 | Final Annual DSH Audit Report to CMS (While this Report is submitted to CMS by the Dept., the Contractor may be requested to assist with some aspects of this final submission) | Microsoft Word in standard report format and PDF; (i.e., binder(s); portfolio(s)); Hard and Electronic Copies | January31 st Each Period (2021-2026); (2028 if option exercised) |

2.5 Corrective Action Plans (CAP)

If the Contract Monitor determines that the Contractor is seriously behind schedule in performing the Contract or seriously deficient in the performance of what the Contract Monitor considers to be a significant Contract requirement, including probably failing to meet a future requirement(s), the Contract Monitor can require the Contractor to submit a Corrective Action Plan (See Exhibit 1 definition.) (Also see Attachment P, LD Item # 32.)

1. When requesting a CAP, the Contract Monitor will:
 - a. Cite the significant Contract requirement(s) that the Contractor has failed to meet or for which the advance indications are that it will fail to satisfy Contract Requirements.
 - b. If applicable, provide the reason for determining that the requirement has not been, or will not be, met.
 - c. State a timeframe within which the CAP is to be provided. Depending upon the expected complexity of the CAP, the response timeframe will usually be between 3 and 10 Business Days.
 - d. State a maximum timeframe within which the deficient performance is to be rectified. (The maximum timeframe for the Contractor to get back on schedule, meet the required quality level or provide the required Deliverable.)
 - e. Possibly state specific actions or resources he/she expects to be included in the CAP, which may include a request to change personnel.
2. The Contract Monitor will generally respond to the Contractor's CAP within 5 Business Days of receipt. The Contract Monitor response will be to either accept the CAP or to reject it in whole or in part.
 - a. If the Contract Monitor accepts the CAP, the Contractor is to implement that CAP.
 - b. If the CAP is rejected, the Contract Monitor will state the reason(s) for the rejection, possibly including specific changes to be made, and a maximum timeframe within which a new or revised CAP is to be provided.
 - c. If the CAP is accepted in part and rejected in part, the Contract Monitor will state which part(s) are accepted and which part(s) are rejected.
 - i. If reasonably possible given the nature of the CAP that was rejected, the Contractor should immediately proceed to implement the approved portion of the CAP.
 - ii. The Contract Monitor will state why part of the CAP was rejected, possibly including specific changes to be made, and a maximum timeframe for the re-submission of the rejected portion
3. The request for a CAP by the Contract Monitor does not preclude the Contract Monitor from withholding applicable payments or also assessing applicable Liquidated Damages or Performance Guarantee (See Sections 3.4.3 and 5.3.2.F.8) deductions or taking any other action otherwise permitted under the Contract.
4. If the Contractor fails to follow through with actions or changes contained in a CAP, or if the actions or changes are implemented but fail to satisfactorily rectify the deficiency(ies), in addition to assessing Liquidated Damages as per Attachment P, LD Item # 32, at his/her discretion the Contract Monitor may:
 - a. Request a new CAP
 - b. Request the Procurement Officer to:
 - i. Suspend work under the Contract
 - ii. Terminate the Contract for default.

3 Contractor Requirements: General

3.1 Contract Initiation Requirements

- A. The Contract that results from these Specifications shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement” Date).
- B. The period of time from the date of Contract Commencement through the NTP Date (expected to be October 1, 2021) will be the Contract “Start-up Period.” During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the NTP Date.
- C. As of the Go-Live (NTP) Date contained in a Notice to Proceed (see Appendix 1. – Abbreviations and Definitions), anticipated to be on or prior to October 1, 2021, the Contractor shall perform all activities required by the Contract, including the requirements of these Specifications, for the agreed-upon compensation.
- D. The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live (NTP) Date and 5 years, plus one (1) 2-Year and 1-month Option (10/1/2021-09/30
- E. /2026; 09/30/2028 if the option period is exercised for the provision of all services required by the Contract.
- F. The Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment M) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

3.2 End of Contract Transition

3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to ninety (90) days prior to the Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:

- A. Additional services and support as requested to successfully complete the transition;
- B. Services called for by the Contract at the required level of proficiency;
- C. Provision of current operating procedures (as appropriate).

3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.

3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed, including hard and electronic copies of Working Papers, are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor. However, transferring a copy of such materials does not relieve the contractor from complying with the materials retention requirements of Sections 2.3.1.11.5.

3.2.4 Liquidated Damages

- A. If the Contractor fails to properly complete a Transition Out Plan as required by Section 3.2.1, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 33
- B. If the Contractor fails to return any State data as required by Section 3.2.5, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 34.

3.2.5 Return and Maintenance of State Data

- A. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data, if any, in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.
- B. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor.
- F. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

3.2.6 Third Party and Contractor Created Data

The majority of data associated with this Contract will be provided by third parties such as MCOs and DSHs or created by the Contractor from third party data. All data, including Work Papers, received by or created by the Contractor shall be retained as described in Sections 2.3.1.11.5 and 2.3.1.11.6.

3.3 Invoicing

3.3.1 General

- A. The Contractor shall, by e-mail, forward the original of each invoice and signed authorization (in blue ink) to the Contract Monitor at the following address:
thelmat.mcclellan@maryland.gov.
- G. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- H. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
 - 1) Contractor name and address;
 - 2) Remittance address;

- 3) Federal taxpayer identification (FEIN) number or social security number, as appropriate;
- 4) Invoice period (i.e. time period during which services covered by invoice were performed);
- 5) Invoice date;
- 6) Invoice number;
- 7) State assigned Contract number;
- 8) State assigned (Blanket) Purchase Order number(s);
- 9) Goods or services provided;
- 10) Amount due; and
- 11) Any additional documentation required by regulation or the Contract.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

- I. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.
- J. The Medical Care Programs Office of Finance reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Medical Care Programs Office of Finance with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- K. Any action on the part of the Medical Care Programs Office of Finance, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- L. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.
- M. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. Except for the possibility of invoices for the provision of Contractor staff to assist with the defense of Provider appeals as described in Section 2.3.4.1.2, in no event shall any invoice for work performed during the Contract term be submitted later than 60 calendar days after the Contract termination date, unless there is State data to be returned as described in Section 3.2.5. If there is State data to be returned, final payment will not occur until after it has been verified that the Contractor has returned the required data.
- N. See the “Living Wage” provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances.
- O. Contractor shall have a process for resolving billing errors.

3.3.2 Invoice Submission Schedule

The Contractor shall submit invoices by the 15th of each month covering all work completed by the end of the previous month, which will constitute the Billing Period. Additional billing details are:

- A. For Labor Hours work, payments for services shall be made based on invoices of actual hours worked at rates specified in the Contractor's Attachment B-3 Price Form (Financial Proposal) for that category of personnel and appropriate Period the work was performed. Labor Hours shall be billed in quarter hour increments, as follows:
 - 1. Any time that is less than one (1) hour shall only be paid if it is at least 10 minutes. E.g., A person working 8 minutes in a given month shall not be billed at all.
 - 2. Whereas the work time of each individual Contractor Personnel is to be separately identified by work time, the Contractor shall submit an invoice that aggregates all such work times.
 - 3. Any aggregated time that is less than 5 minutes over an exact hour shall be billed as the lower exact hour.
 - 4. Except as described in 3.3.2.A 3, any aggregated time in excess of exactly 15 minutes shall be billed at the next increment level. E.g., 13 minutes shall be billed as 15 minutes; 38 minutes shall be billed as 45 minutes; 52 minutes shall be billed as the next higher exact hour.
- B. For items of work for which there is one-time pricing (see **Attachment B-3** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the Medical Care Programs Office of Finance
- C. For items of work for which there is annual pricing, see **Attachment B-3** – Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract Period in the month following the performance of the services.
- D. Billing for the 10% labor hours holdback/retention will be as described in Section 2.3.2.6.2.
- E. The Firm Fixed Price for Actuarial Services for MCO AUP Reviews for each respective Contract Period on the Attachment B-3 Price Form may not be invoiced until the Draft MCO AUP Reviews have been accepted by the Contract Monitor.
- F. In accordance with the Contract run-out requirement from Section 2.3.1.11.5, if the Contractor is requested to provide personnel for litigation support, it may invoice for such support as described in Section 2.3.4.1.2.

3.3.3 For the purposes of the Contract an amount will not be deemed due and payable if:

- A. The amount invoiced is inconsistent with the Contract;
- B. The proper invoice has not been received by the party or office specified in the Contract;
- C. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- D. The item or services have not been accepted;
- E. The quantity of items delivered is less than the quantity ordered;
- F. The items or services do not meet the quality requirements of the Contract;
- G. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- H. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or

- I. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.
- J. The invoice is for a report but the format for the report has not yet been approved between the Contractor and the Contract Monitor as required by Section 2.3.1.7.3.B.

3.3.4 Invoice Breakdown and Running Total Report

3.3.4.1 Monthly Invoice Breakdown

Each monthly AUP Review invoice must be broken-down and summarized five ways:

1. The separate 1/12th of Annual Administrative Fee (e.g., for the Contract Manager and IT and Administrative Support; see Section 2.3.6 and Attachment B-3, Item D).
2. The total number of hours worked during the month for all labor classifications other than the Contract Manager.
3. The total number of hours for each respective MCO AUP Review, MLR Examination, DSH Audit or other Contract activity (Support Services or Special Projects).
4. The total number of hours by labor classification.
5. Other Charges, when appropriate. (e.g., Billing for Actuarial Services or 10% withholding.)

3.3.4.2 Cumulative, Period-to-Date Breakdown

Aside from the actual invoice for the work performed during a given month, there must be a cumulative, Contract Period-to-Date total broken down the same way.

3.3.4.3 Assessment of Stage of Completion

The Contractor must provide its assessment of the progress of each MCO AUP Review, MLR Examination, DSH Audit or other assigned work activity. i.e., the Contractor must describe its assessed level of completion of each MCO AUP Review, MLR Examination, DSH Audit, Special Project and Support Services and its projection of whether all required work activities will be completed within the required timeframe and quality level.

3.3.4.4 Need for Corrective Action Plan

If the Contractor indicates that it is behind schedule in the completion of any work activity, or if the Contract Monitor determines the Contractor is behind schedule, despite the Contractor not so indicating, the Contract Monitor may direct the Contractor to implement a Corrective Action Plan, as described in Section 2.5.

3.3.5 Travel Reimbursement

Travel will not be reimbursed under this RFP, except as described in Section 2.3.4.1.1.2.

3.4 Liquidated Damages

Liquidated Damages apply to this Contract in accordance with COMAR 21.07.01.13 and .14 as specified in the Contract. Two (2) types of liquidated damages apply to this Contract:

1. Liquidated Damages related to meeting the established MBE goal;
2. Liquidated Damages related to satisfying non-MBE related Contract requirements.

3.4.1 General Provisions for Non-MBE Liquidated Damages

3.4.1.1 It is critical to the success of the MA Program that the services to be provided under the Contract that results from this RFP be performed properly and in strict adherence with required timeframes. It is also critical to the success of the Program that the Contractor operates in an extremely reliable manner.

3.4.1.2 It would be impractical and extremely difficult to assess the actual damage sustained by the State in the event of delays or failures in service, reporting and attendance of Contractor personnel for scheduled work and provision of services to the MA Program. The State and the Contractor, therefore, presume that in the event of any such failure to perform to certain standards, the amount of damages which will be sustained will be the amounts set forth in Attachment P, Liquidated Damages, and the Contractor agrees that in the event of any such failure of performance, the Contractor shall pay such amount as liquidated damages and not as a penalty.

For amounts due the State as liquidated damages, the State, at its option, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

3.4.1.3 The Department will not assess or invoke liquidated damages for any occasion of Contract non-performance otherwise subject to liquidated damages if such nonperformance is determined by the Contract Monitor to have resulted from circumstances beyond the control of the Contractor.

3.4.1.4 In order for a determination to be made of whether this provision applies, in accordance with §3.4.1.5, the Contractor may provide an explanation for any occasion of Contract non-performance otherwise subject to liquidated damages of why it believes the non-performance was attributable to circumstances beyond its control.

3.4.1.5 If the Contractor disputes the validity of a liquidated damages assessment, including that a liquidated damage should not be assessed based upon circumstances beyond its control as described in §3.4.1.3, or disputes the amount of a given liquidated damage assessment, the liquidated damage will not be assessed unless and until the Contract Monitor makes a determination as described in §3.4.1.6 that the imposition of the liquidated damage and the amount of the damage is proper.

3.4.1.6 To enable the Contract Monitor to render a timely decision regarding any dispute of an occasion when a liquidated damage is assessed, at the time the Contractor disputes the liquidated damage assessment it shall provide a full explanation of why it does not believe the liquidated damage should be assessed, or assessed for the amount indicated. If the Contract Monitor does not believe the submitted justification or substantiation thereof is sufficient, or if the Contractor fails to provide the required justification for its dispute, the Contract Monitor may request additional justification and/or documentation, and/or may give a finite deadline for the submission of such justification and/or documentation.

3.4.1.7 If the requested justification and/or documentation is not submitted within the required timeframe, the Contract Monitor will render a determination based upon whatever information has been provided to that point in time.

3.4.1.8 Any time a liquidated damage assessment is disputed by the Contractor, the Contract Monitor will render a written (typically email) final decision concerning the imposition of the liquidated damage. This final decision can:

- Uphold the liquidated damage assessment;
- Rescind the liquidated damage, in full or in part; or,
- Determine that a given liquidated damages assessment is merited, but that the amount of assessment should be different than originally computed.

3.4.2 MBE-Related Liquidated Damages

All circumstances concerning MBE liquidated damages are identified in Attachment M.

3.4.3 Contractor Service Level Agreement (Performance) Guarantees

3.4.3.1 As per Section 5.3.2. F.8, the Contractor in its Proposal could offer SLAs (Performance Guarantees) in excess of or in addition to the Liquidated Damages described in Attachment P. Offeror proposed SLAs could be any combination of higher damages amounts for non-performance, guaranteed faster performance or guarantees for performance in addition to those listed in Attachment P.

3.4.3.2 While as described in Section 3.4.3.1, Offerors may propose additional Performance Guarantees, they may not eliminate, decrease the amount of or alter the applicable timeframe for any Liquidated Damage item listed on Attachment P.

3.5 Disaster Recovery and Data

The following requirements apply to the Contract:

3.5.1 Redundancy, Data Backup and Disaster Recovery

The Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Work Papers and other data used to satisfy the requirements of the Contract, in each case throughout the Contract term. The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.

- 1) The Contractor shall furnish a DR site.
- 2) The DR site shall be at least 100 miles from the primary operations site,

3.5.2 Data Ownership and Access

- A. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.
- G. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor

or any party related to the Contractor for subsequent use in any transaction that does not include the State.

- H. The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

3.6 Insurance Requirements

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

- 3.6.1 The following type(s) of insurance and minimum amount(s) of coverage are required:
 - A. Commercial General Liability - \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
 - B. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
 - C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Medical Care Programs Office of Finance should be added as a “loss payee.”
 - D. Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars (\$10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State’s claimants or employers is processed or stored.
 - E. Worker’s Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state’s law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
 - F. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.6.2 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers’ Compensation Insurance and professional liability.
- 3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.

3.6.4 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

3.6.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, no more than 15 and no less than 7 days before the anniversary date of each Contract Period or as otherwise directed by the Contract Monitor.

3.6.6 Subcontractor Insurance

The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.6.7 Liquidated Damages

If the Contractor fails to maintain insurance as required by this Section 3.6, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 35.

3.7 Security Requirements

The following requirements are applicable to the Contract:

3.7.1 Employee Identification

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion that the Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

3.7.2 Security Clearance / Criminal Background Check

- A. A criminal background check for any Contractor Personnel assigned to work on the Contract shall be completed prior to each Contractor Personnel providing any services under the Contract.
- B. The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- C. At a minimum, these checks must contain convictions and probation before judgment (PBJ) pleadings within the State of Maryland. This check may be performed by a public or private entity.

- D. The Contractor shall provide certification to the MDH MCP Office of Finance that the Contractor has completed the required criminal background check described in this RFP for each required Contractor Personnel prior to assignment, and that the Contractor Personnel have successfully passed this check.
- E. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.

3.7.3 On-Site Security Requirement(s)

This section is not applicable to this RFP.

3.7.4 Information Technology

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see Section 3.7.5);
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3.7.5 Data Protection and Controls

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):
 - 1) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.7.5**.

- 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <http://iase.disa.mil/Pages/index.aspx>, or similar industry best practices to reduce the systems' surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor's system configuration files.
- 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization security measures.
- 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
- 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
- 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2:
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The Medical Care Programs Office of Finance shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
- 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
- 11) By default "deny all" and only allow access by exception.
- 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.

- 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The Medical Care Programs Office of Finance shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
- 14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- 15) Ensure State data is not processed, transferred, or stored outside of the United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
- 16) Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor -owned equipment to a State LAN/WAN.
- 17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
- 18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Medical Care Programs Office of Finance shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

3.7.6 Security Plan

- A. The Contractor shall protect State data according to a written security policy (“Security Plan”) no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
- I. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.
- J. The Contractor shall provide within 30 days after the NTP Date and maintain for the entire Contract term, an Information Security Plan for approval/disapproval by the Contract Monitor. (See Section 2.3.1.8.)

3.7.7 Security Incident Response

- A. The Contractor shall notify the Contract Monitor in accordance with Section 3.7.7 A-D when any Contractor and/or subcontractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
 - 1) notify the Medical Care Programs Office of Finance Contract Monitor within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Procurement Officer, Maryland Department of Health (MDH) chief information officer and MDH chief information security officer;
 - 2) notify the Medical Care Programs Office of Finance Contract Monitor within two (2) hours if there is a threat to Contractor’s Solution as it pertains to the use, disclosure, and security of State data; and
 - 3) provide written notice to the Medical Care Programs Office of Finance Contract Monitor within one (1) Business Day after Contractor’s discovery of unauthorized use or disclosure of State data and thereafter all information the State or Medical Care Programs Office of Finance Contract Monitor requests concerning such unauthorized use or disclosure.
- B. Contractor’s notice shall identify:
 - 1) the nature of the unauthorized use or disclosure;
 - 2) the State data used or disclosed,
 - 3) who made the unauthorized use or received the unauthorized disclosure;
 - 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of

Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.

- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State Maryland Department of Health and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.
- E. This Section 3.7.7 shall survive expiration or termination of the Contract.

3.7.8 Data Breach Responsibilities

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
 - 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
 - 2) Cooperate with the State to investigate and resolve the data breach;
 - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
 - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

3.7.9 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

3.7.10 Provisions in Sections 3.7.1 – 3.7.8 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.7.4-3.7.8 (or the substance thereof) in all subcontracts.

3.8 Problem Escalation Procedure

3.8.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

3.8.2 The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

3.8.3 The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract Period and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- A. The process for establishing the existence of a problem;
- B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- C. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- D. Expedited escalation procedures and any circumstances that would trigger expediting them;
- E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- G. A process for updating and notifying the Contract Monitor of any changes to the PEP.

3.8.4 Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.8.5 Liquidated Damages

If the Contractor fails to provide and maintain an appropriate Problem Escalation Procedure, Liquidated Damages will be assessed as described in Section 3.4 and Attachment P, LD Item # 36.

3.9 SOC 2 Type 2 Audit Report

3.9.1 A SOC 2 Type 2 Audit applies to the Contract. The applicable trust principles are: Security, Availability, Processing Integrity, Confidentiality, and Privacy.

3.9.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the Maryland Department of Health's critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit guidance: Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Maryland Department of Health, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
- B. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust principles identified in 3.9.1: as defined in the aforementioned Guidance.
- C. The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- D. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the Maryland Department of Health under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- E. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the Maryland Department of Health.
- F. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the Maryland Department of Health under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Maryland Department of Health will determine in consultation with appropriate State government technology and audit authorities whether the Contractor’s current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- H. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the Maryland Department of Health shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the

Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Maryland Department of Health will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

- I. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

3.10 Experience and Personnel

3.10.1 Preferred Offeror Experience

Ideally, Offerors will have the following experience concerning MCO and DSH activities. Nevertheless, as requested by Section 5.3.2.H, Offerors should describe whatever experience they have concerning MCO/DSH activities for a state Medicaid program. Offeror with more extensive MCO/DSH experience will be rated more highly under evaluation criterion 6.2.3, Offeror Qualifications and Capabilities, including proposed subcontractors.

- J. Demonstrated comprehensive knowledge of the Federal and State laws and regulations governing Medicaid programs, with the ability to apply this expertise to perform the necessary complex Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSHs) reviews, audits and reporting requirements.
- K. Five (5) or more years' experience as a prime contractor performing MCO and DSH audits; associated rate setting methodology; and expert guidance in CMS and Medicaid Agreed Upon Procedures Reviews, Related Accounting and Consulting Procedures.
- C. Breadth of knowledge in federal and state laws and regulations governing Medicaid programs; performing MCO and DSH audits; and associated rate setting methodology; and expert guidance in CMS and Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH)

3.10.2 Personnel Experience and Designation of Key Personnel

3.10.2.1 The Contractor shall have a Contract Manager as described in Section 2.3.6. The Contractor must also have one or more Audit Manager and Supervising Auditor who must be certified by the Maryland Board of Accountancy as Certified Public Accountants (CPAs) and be current on all required Continuing Professional Education requirements.

3.10.2.2 Each person in the Contract Manager, Audit Manager, Supervising Auditor and Senior Auditor Labor Classifications will be Key Personnel who must meet the qualifications set forth below in Sections 3.10.3 or the equivalency afforded in Section 3.10.5 and are subject to the Requirements of Section 3.11.

3.10.2.3 Ideally, the individuals proposed by Offerors as Audit Managers, Supervising Auditors or Senior Auditors will have the following experience concerning MCO and DSH activities. Nevertheless, as requested by Section 5.3.2.G, Offerors should describe whatever experience their higher-level staff have concerning MCO/DSH activities for a state Medicaid program. As long as the

proposed individuals possess the minimum requirements listed in Section 3.10.3, or the equivalency permitted by Section 3.10.5, Offerors proposing Key Personnel with more extensive MCO/DSH experience will be rated more highly under evaluation criterion 6.2.2, Experience and Capabilities of Proposed Staff.

- A. Comprehensive knowledge of the Federal and State laws and regulations governing Medicaid programs with the ability to apply this expertise to perform the necessary complex Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSHs) audits and reporting requirements.
- B. Prior senior level experience for five (5) or more years (three (3) or more years for Senior Auditors), conducting health care auditing; associated rate setting methodology; and expert guidance in CMS and Medicaid Agreed Upon Procedures Reviews, Related Accounting and Consulting Procedures.
- C. Breadth of knowledge in Federal and State laws and regulations governing Medicaid programs; performing MCO and DSH audits; and associated rate setting methodology; and expert guidance in CMS and Medicaid Agreed Upon Procedures Reviews and Related Accounting and Consulting Procedures.

3.10.3 Labor Classifications and Required Characteristics

- A. Contract Manager: A senior level official of the Contractor who has overall responsibility for the successful completion of the Contract. The person(s) serving in this position must have at least a bachelor's degree and preferably a master's degree or higher. This person must also have at least 5 years' experience in supervising/managing contracts with annual billings of at least \$1 million per year. The ideal candidate might either be a Project Management Professional (PMP) or be a partner in an accounting/auditing firm with annual billings of at least \$2 million per year.

If this person will also serve as an Audit Manager or Supervising Auditor, he/she must meet the specific requirements for that other position.

- B. Audit Manager: Manager level auditors are upper level accounting and auditing personnel who must possess a Bachelor's (BS) degree or higher degree in Accounting and be a CPA and a Partner or Manager with at least five (5) years' experience in health care auditing and Medicaid reimbursement. The Audit Manager's responsibilities include overall project management of one or more AUP Reviews, MLR Examinations and/or DSH Audits that includes planning, supervision, position paper preparation, technical consulting and completion of several simultaneous engagements. The requirement that the Audit Manager must be a CPA may be waived by the Contract Monitor if an individual has at least ten (10) years of directly related experience and it is demonstrated that it would be in the State's best interest to waive this requirement.
- C. Supervising Auditor: Supervising auditors are upper level accounting and auditing personnel with more than five years' experience in health care auditing. Their responsibilities include overall planning organization, scheduling, supervision, problem solving, position paper preparation, technical consulting and completion of several simultaneous engagements. They will be CPA's with a BS degree in accounting. The requirement that the supervisor must be a CPA may be waived by the Contract Monitor if an individual has at least ten (10) years of directly related experience and it is demonstrated that it would be in the State's best interest to waive this requirement.

- D. Senior Auditor: Senior auditors are mid-level accounting and auditing Personnel who are generally categorized as Supervisors and must have at least three years' experience in health care auditing. These persons are responsible for supervising numerous individuals and projects at one time. They assist Partners in the review and scheduling of assignments and providing technical support for the field teams. They are accountants with a BS degree.
- E. Junior Auditor: Junior auditors are categorized as in-charge accountants and must have one year or more experience in health care auditing. These persons are given in-charge responsibility on engagements and can work without close supervision, although their work is reviewed and controlled. They are directly responsible for the supervision of Entry Level Auditors. They are Bachelor of Science (BS) or equivalent degreed accountants and typically spend approximately 75% or more of their time working in the health care field.
- F. Entry Level Auditors: Entry level auditors are generally categorized as assistants and have less than one year's experience. These individuals work under the direct supervision of higher-level auditors and perform basic assignments while gaining continued experience and increased responsibility on engagements. They are Bachelor of Arts (BA) or equivalent degreed accountants and typically spend approximately 75% or more of their time working in the health care field.
- G. Auditor Interns: Intern level auditors are generally not degreed and are categorized as individuals who are getting experience in the accounting profession. These individuals are hired on a temporary basis and work with direct supervision.
- H. Administrative Staff: Administrative staff generally are not degreed individuals and are categorized as clerical personnel who will perform clerical and administrative support functions. These individuals work with direct supervision.

3.10.4 Labor Categories (Classifications)

- A. The Labor Categories are identified and described above in Section 3.10.3. Offerors must be capable of providing personnel meeting the minimum requirements for all the labor categories listed. Offerors shall submit a Financial Proposal Price Form (Attachment B-3) that provides labor rates for all labor categories for all Contract Years (initial term and any option periods). Actual resumes shall be provided only for Key Personnel.
- B. Each Labor Category includes Titles, Position Description, Education and Experience (General and Specialized).
- C. Education and experience described above in Section 3.10.3 constitute the minimum requirements for candidates performing work under this RFP, unless an equivalent substitution is permitted as per Section 3.10.5. All experience required must have occurred within the most recent ten (10) years.

3.10.5 Contractor Personnel Experience Equivalency (including Key Personnel submitted in response to this RFP)

- A. A Substitution of Education for Experience: Bachelor's Degree or higher may be substituted for the general and specialized experience for those labor categories requiring a High School Diploma. A Master's Degree may be substituted for two years of the general and specialized experience for those labor categories requiring a bachelor's degree. Substitution shall be reviewed and approved by the Contract Monitor at his/her discretion.
- H. Substitution of Experience for Education: Substitution of experience for education may be permitted at the discretion of the Contract Monitor.

- I. Substitution of Professional Certificates for Experience: Professional certification (e.g., CPA may be substituted for up to two (2) years for general and specialized experience at the discretion of the State.

3.10.6 Contractor Personnel Maintain Certifications

Any Contractor Personnel provided under this RFP shall maintain in good standing any required professional certifications for the duration of the Contract.

3.11 Substitution of Personnel

3.11.1 Continuous Performance of Key Personnel

When Key Personnel are identified for the Contract, the following apply:

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract,
- B. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Contract Monitor.

3.11.2 Definitions

For the purposes of this section, the following definitions apply:

- A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- J. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s Technical Proposal.
- K. **Sudden** – means when the Contractor has less than thirty (30) days prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

3.11.3 Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in Section 3.11.4.

- A. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- L. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - 1) A detailed explanation of the reason(s) for the substitution request;
 - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
 - 3) The official resume of the current personnel for comparison purposes; and
 - 4) Evidence of any required credentials.

- M. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- N. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

3.11.4 Replacement Circumstances

A. Directed Personnel Replacement

- 1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, Maryland Department of Health policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 3.11.4.A.2.
- 2) If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.
- 3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Contract Monitor determines to direct substitution under 3.11.4.A.1, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and, in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.
- 6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.11.4.A.1 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

O. Key Personnel Replacement

- 1) To replace any Key Personnel in a circumstance other than as described in 3.11.4.B.2, including transfers and promotions, the Contractor shall submit a substitution request as described in Section 3.11.3 to the Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
- 2) Key Personnel Replacement Due to Sudden Vacancy
 - a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under Section 3.11.4.B.1.
 - b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under Section 3.11.3 within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) Key Personnel Replacement Due to an Indeterminate Absence
 - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under Section 3.11.3.
 - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

C. Liquidated Damages

If the Contractor fails to comply with Key Personnel Substitution requirements as described in this Section 3.11, it will be subject to the assessment of Liquidated Damages as described in Section 3.4 and Attachment P, LD Item # 37.

3.12 Minority Business Enterprise (MBE) Reports

If this solicitation includes an MBE Goal (see Section 4.26), the Contractor shall:

- A. Submit the following reports by the 10th of each month to the Contract Monitor and the Maryland Department of Health's MBE Liaison Officer:
 - 1) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and

- 2) (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- P. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment D-5) by the 10th of each month to the Contract Monitor and the Maryland Department of Health's MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- Q. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- R. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- S. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

3.13 Veteran Small Business Enterprise (VSBE) Reports

If this solicitation includes a VSBE Goal (see Section 4.27), the Contractor shall:

- A. Submit the following reports by the 10th of the month following the reporting period to the Contract Monitor and the Maryland Department of Health's VSBE representative:
- 1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and
 - 2) Attachment E-4, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
- T. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and Maryland Department of Health's VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (Attachment E-4).
- U. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

- V. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- W. At the option of the Maryland Department of Health, upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

3.14 Work Orders

Work orders are the equivalent of Support Services and Special Projects which are described in Sections 2.3.4 and 2.3.5, respectively.

3.15 No-Cost Extensions

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

4 Procurement Instructions

4.1 Pre-Proposal Conference

4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.

4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an Offeror's good faith efforts if there is a waiver request.

4.1.3 It is highly recommended that ALL prime contractors bring their intended subcontractors to the Conference to ensure that all parties understand the requirements of the Contract and the MBE goal.

4.1.4 MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.

4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see Section 4.2.1 eMMA).

4.1.6 Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.

4.1.7 In order to assure adequate seating and other accommodations at the Conference, please e-mail the Pre-Proposal Conference Response Form (**Attachment A**) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The **Maryland Department of Health** will make a reasonable effort to provide such special accommodation.

4.2 eMaryland Marketplace Advantage (eMMA)

4.2.1 eMMA is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.

4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to <https://procurement.maryland.gov>, click on "Register" to begin the process, and then follow the prompts.

4.2.3 Each Offeror is requested to indicate its eMaryland Marketplace Advantage (eMMA) vendor number in the Transmittal (Cover) Letter (See Section 5.3.2.C) submitted at the time of its Proposal submission to this RFP.

4.3 Questions

4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the solicitation number and title **MDH-OPASS-20-** Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) - and shall be submitted in writing via e-mail to the Procurement Officer, preferably at least five (5) days prior to the Proposal due date. The Procurement Officer, based on

the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMMA.

4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

4.5 Proposal Due (Closing) Date and Time

4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.

4.5.2 Requests for extension of this date or time shall not be granted.

4.5.3 Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.

4.5.4 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.

4.5.5 Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

4.5.6 Potential Offerors not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

4.7 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

4.8 Public Information Act Notice

4.8.1 The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2.B** “Claim of Confidentiality”). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

4.8.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

4.9 Award Basis

A Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP **Section 6** for further award information.

4.10 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Oral presentations are considered part of the Technical Proposal. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal. The Procurement Officer will notify Offerors of the time and place of oral presentations.

4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.12 Revisions to the RFP

4.12.1 If the RFP is revised before the due date for Proposals, the Maryland Department of Health shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.

4.12.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter (See Section 5.3.2.C) accompanying the Offeror's Technical Proposal.

4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.

4.12.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.

4.12.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

4.13 Cancellations

4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.

4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled, and the award processed in accordance with COMAR 21.01.03.01.A(4).

4.13.4 If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md, Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

4.14 Incurred Expenses

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

4.15 Protest/Disputes

Any protest or dispute related to this solicitation or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

4.16 Offeror Responsibilities

4.16.1 Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.

4.16.2 All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 "Minority Participation Goal" and Section 4.27 "VSBE Goal").

4.16.3 If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, and letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

4.16.4 A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

4.17 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary (See Section 5.3.2.D) of the Technical Proposal. **All exceptions will be taken into consideration when**

evaluating the Offeror's Proposal. The Maryland Department of Health reserves the right to accept or reject any exceptions.

4.18 Proposal Affidavit

A Proposal submitted by the Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as Attachment C of this RFP.

4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment N of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

4.20 Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Offeror complete registration prior to the Proposal due date and time. The Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

4.22 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- 4.22.1 In connection with a procurement contract a person may not willfully:
- A. Falsify, conceal, or suppress a material fact by any scheme or device.
 - B. Make a false or fraudulent statement or representation of a material fact.
 - C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

- 4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.
- 4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

4.23 Payments by Electronic Funds Transfer

By submitting a Proposal in response to this solicitation, the Offeror, if selected for award:

- 4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.
- 4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:
http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf.

4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see Attachment M), should an MBE goal apply to this RFP. Additional information is available on GOSBA's website at:
<http://www.gomdsmbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Maryland Department of Health may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bso/>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

- A. The Procurement Officer may conduct the procurement using eMMA, e-mail, or facsimile to issue:
- 1) The RFP;
 - 2) Any amendments and requests for best and final offers;
 - 3) Pre-Proposal conference documents;
 - 4) Questions and responses;
 - 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
 - 6) Notices of award selection or non-selection; and
 - 7) The Procurement Officer's decision on any Proposal protest or Contract claim.
- B. The Offeror or potential Offeror may use e-mail to:
- 1) Ask questions regarding the solicitation;
 - 2) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer and;
 - 3) Submit a "No Proposal Response" to the RFP.
- C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section 4.25.5 of this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are not authorized to be conducted by electronic means:

- A. Filing of protests;
- B. Filing of Contract claims;
- C. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

4.25.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

4.26 MBE Participation Goal

4.26.1 Establishment of Goal and Subgoals

An overall **25%** MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

In addition, the following subgoals have been established for this procurement:

- (a) 7% for African-American MBEs;

- (b) 4% for Asian-American MBEs; and
- (c) 12% for Woman-Owned MBEs.

Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP will result in the State's rejection of the Offeror's Proposal for the applicable Service Category. This failure is not curable.

4.26.2 Attachments.

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
 - 1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
 - 2. Attachment D-1B Waiver Guidance
 - 3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
 - 4. Attachment D-2 Outreach Efforts Compliance Statement
 - 5. Attachment D-3A MBE Subcontractor Project Participation Certification
 - 6. Attachment D-3B MBE Prime Project Participation Certification
 - 7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
 - 8. Attachment D-4B MBE Prime Contractor Report
 - 9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- D. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
 - 1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 - 2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value

associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

3. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.

4.26.3 Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

4.26.4 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.

- A. Outreach Efforts Compliance Statement (Attachment D-2);
- E. MBE Subcontractor/Prime Project Participation Certification (Attachment D-3A/3B); and
- F. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
- G. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

4.26.5 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

4.26.6 The Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – Attachment M, Section 2.1).

4.26.8 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – Attachment M, Liquidated Damages for MBE, section 39).

4.26.9 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (Attachment D-1A) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the subgoals, the MBE prime must also identify other certified MBE subcontractors [see Section 4B of the MBE Participation Schedule (Attachment D-1A)] used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE subgoal classifications but can self-perform up to 100% of the stated subgoal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (Attachment D) for additional information.

4.27 VSBE Goal

4.27.1 Purpose

- A. The Contractor shall structure its procedures for the performance of the work required in the Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and Attachment E, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and Attachment E.
- H. Veteran-Owned Small Business Enterprises must be verified by the Office of Small and Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.va.gov/osdbu>.

4.27.2 VSBE Goal

- A. A VSBE participation goal of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet.
- I. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

4.27.3 Solicitation and Contract Formation

- A. In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors to:
 - 1) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
 - 2) Solicit VSBEs before Proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;

- 3) Attempt to make personal contact with the VSBEs solicited and to document these attempts;
 - 4) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
 - 5) Attempt to attend pre-Proposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.
- J. The Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:
- 6) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
 - 7) Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.
- K. As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.
- L. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (Attachment E-1) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.
- M. Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer:
- 8) VSBE Project Participation Statement (Attachment E-2);
 - 9) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
 - 10) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not reasonably susceptible of being selected for award.

4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to

covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

- N. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor (DOL) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- O. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- P. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
- 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07. **In this circumstance, the Contract will be determined to be a Tier 1 Contract.**
 - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. **The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.**
 - 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
 - 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- Q. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.

4.29 Federal Funding Acknowledgement

4.29.1 There are programmatic conditions that apply to the Contract due to federal funding (see Attachment G).

4.29.2 The total amount of federal funds allocated for the Maryland Department of Health Medical Care Provider Reimbursements is \$5,846,529,321- in Maryland State fiscal year 2019. This represents 50% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.

4.29.3 The Contract contains federal funds. The source of these federal funds is: The Medical Assistance Program. The CFDA number is: 93.778. The conditions that apply to all federal funds awarded by the Maryland Department of Health are contained in Federal Funds Attachment G. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds Attachment G and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions which are part of the Contract.

4.30 Conflict of Interest Affidavit and Disclosure

4.30.1 The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment H) and submit it with its Proposal.

4.30.2 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that "an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement." Any Offeror submitting a Proposal in violation of this provision shall be classified as "not responsible." See COMAR 21.05.03.03.

4.31 Non-Disclosure Agreement

4.31.1 Non-Disclosure Agreement (Contractor)

All Offerors are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as Attachment I. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

4.32 HIPAA - Business Associate Agreement

Based on the determination by the Maryland Department of Health that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in Attachment J. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Offeror with the next highest overall-ranked Proposal.

4.33 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

4.34 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

4.35 Location of the Performance of Services Disclosure

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as Attachment L. The Disclosure must be provided with the Proposal.

4.36 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

4.38 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All Offerors should be aware of how this Act could affect your potential Contract award with the State of Maryland. See the Department of Labor web site for Maryland Healthy Working Families Act information.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

5 Proposal Format

5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I – Technical Proposal
- Volume II – Financial Proposal

5.2 Proposal Delivery and Packaging

5.2.1 Proposals will be delivered only *via* e-mail.

5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.

5.2.3 Offerors may submit Proposals by hand or by mail as described below to the address provided in the Key Information Summary Sheet.

- A. Any Proposal received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. The State recommends a delivery method for which both the date and time of receipt can be verified.
- B. For hand-delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror.

5.2.4 The Procurement Officer must receive all Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.

5.2.5 Offerors shall provide their Proposals in two separately sealed and labeled packages as follows:

- A. Volume I - Technical Proposal consisting of:
 - 1) One (1) original executed Technical Proposal and all supporting material marked and sealed;
 - 2) Four (4) duplicate copies of the above separately marked and sealed;
 - 3) an electronic version of the Technical Proposal in Microsoft Word format, version 2007 or greater;
 - 4) the Technical Proposal in searchable Adobe PDF format; and
 - 5) a second searchable Adobe PDF copy of the Technical Proposal with confidential and proprietary information redacted (see Section 4.8).
- C. Volume II - Financial Proposal consisting of:
 - 6) One (1) original executed Financial Proposal and all supporting material marked and sealed;
 - 7) Four (4) duplicate copies of the above separately marked and sealed;

- 8) an electronic version of the Financial Proposal in searchable Adobe PDF format and Microsoft Excel; and
- 9) a second searchable Adobe pdf copy of the Financial Proposal, with confidential and proprietary information redacted (see Section 4.8).

5.2.6 Affix the following to the outside of each sealed Proposal. Include the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Unless the resulting package will be too unwieldy, the State's preference is for the separately sealed Technical and Financial Proposals to be submitted together in a single package to the Procurement Officer and including a label bearing:

- o RFP title and number,
- o Name and address of the Offeror, and
- o Closing date and time for receipt of Proposals

5.2.7 Label each electronic media (CD, DVD, or flash drive) on the outside with the RFP title and number, name of the Offeror, and volume number. Electronic media must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

5.3 Volume I - Technical Proposal

NOTE: Omit all pricing information from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

5.3.1 In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . ."; "Section 2.2.2 Response . . ."). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

5.3.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

A. Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

B. Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 "Public Information Act Notice"**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and

time. Transmittal Letter should be brief and be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.

D. Executive Summary (Submit under TAB C)

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”

In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

F. Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)

1. The Offeror shall address each RFP requirement (**RFP Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in Section 2 and Section 3 in order, and shall contain a cross reference to the requirement.
2. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
3. The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in **RFP Section 2, Contractor Requirements: Scope of Work**. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

In providing this section-by-section description, the Offeror must address or answer all items listed in Section 5.3.2.F.4-15 below, either in the section-by-section response or

under the specific item number (4-15), but not both places. Wherever the information is addressed, make a notation in the other location of where the information is provided.

E.g., If any of items 4-15 is addressed in the section-by-section description, the information should be highlighted or italicized and after the information is described there should be a parentheses notation that says that the preceding highlighted (or italicized) material is in response to item 5.3.2.F X. (Or in partial response, if there are portions of the total response in multiple locations in the section description.)

Conversely, if an Offeror chooses to provide all information concerning any of items 5.3.2.F. 4-15 under the item itself, where appropriate in the section by section response there should be a parentheses notation to see the response to item X for a full description of the issue.

4. The Offeror shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP. As per Section 2.3.1.3, Offerors must identify the location of an office within 20 miles of 201 W. Preston St. and that location must reasonably accommodate at least 4 Department staff for up to an entire workday or multiple workdays.
5. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in Section 3.8.
6. Provide a draft Medicaid MCO Agreed Upon Procedures protocol document explaining how the Offeror plans to conduct the MCO AUP Reviews with the proper depth and breath of effort to produce substantive, defensible analyses within the required timeframes.
7. Affirm its understanding and acceptance:
 - i) Of the Not-to-Exceed nature of the MCO AUP Reviews, MLR Examinations and DSH Audits in terms of the Contractor having to perform all requirements for no more than its NTE price on the Attachment B-3 Price Form for each respective Contract Period even if additional work is needed to complete deliverables.
 - ii) Of the 10 % Hold Back provision for labor hours billings prior to the completion and acceptance by the Contract Monitor of the various deliverables under the Contract.
 - iii) Of the Staff Mix requirements in terms of the Contractor possibly being paid at lower Labor Classification rates than the Labor Classification that actually performs the work if the Contractor uses more higher-level Labor Classifications than anticipated on its Attachment B-3 Price Form for each respective Contract Period.
 - iv) That all Work Papers and other materials produced under the Contract are the property of the State and will be turned over as required.

- v) That if the Contractor is not the successful offeror for a follow-up contract award that it will fully cooperate in the transition to a new contractor. Also describe its typical process to help assure a smooth transition to a successor contractor.
 - vi) That it will fully cooperate with the defense by the Department of any appeal or other legal proceeding that occurs for up to 5 Periods after the Contract has expired by timely providing requested documents and staff to consult with Department legal staff and/or appear as witnesses.
8. As described in Section 3.4, Offerors may guarantee better performance by offering Liquidated Damages (Performance Guarantees) in excess of those contained in Attachment P. Offerors may have any combination of guaranteed faster performance for activities than the timeframes provided in Attachment P, higher damages amounts than those listed in Attachment P, or guarantees in addition to those listed in Attachment P. In making any such LD enhancements, the Offeror must clearly state all circumstances concerning its increased guarantees. Moreover, the guarantees must be definite. i.e., a proposal that offers an “up to” guarantee, but does not propose a minimum or floor guarantee, will not be interpreted as constituting a guarantee at all. Only explicit guarantees or those with a minimum guaranteed level of damages will be treated as guarantees to be evaluated under this Section.
9. Describe how it will comply with all HIPAA and other requirements related to maintaining the confidentiality of Sensitive Data (See Appendix 1 Definition.), as well as data or information concerning the business practices or financial information of individual MCOs or DSHs or State information. In essence, this would serve as a draft Information Security Plan.
10. Describe:
- A. The expected number and type (Labor Classifications) of personnel that it expects to use to perform all required services, both routinely and at peak work times.
 - B. How it can rapidly add personnel, subcontractors or other resources to its core personnel working under the Contract if it is:
 - i) Progressing slower than anticipated in the completion of AUP Reviews or audits so that it is in danger of missing audit due dates;
 - ii) Held up for a period of time in performing AUP Reviews and/or audit work due to such factors as non-cooperation from one or more MCOs or DSHs, records being held by the attorney General’s Fraud Unit; changes in AUP Reviews or audit requirements from the CMS, so that it must exert extra effort once needed information becomes available to meet required timeframes.
 - iii) Requested to provide various ad hoc reports or reports more frequently than monthly.
 - iv) Assigned Support Services work in addition to doing MCO AUP Reviews, DSH audits, MLR examinations and possibly Special Projects.
 - v) Assigned Special Projects in addition to doing MCO AUP Reviews, DSH audits, MLR examinations and possibly Support Services.

11. Draft Continuity of Operation Plan (See Section 2.3.1.9.)

The Offeror must include in its Proposal a draft plan for how it will continue operations if one or more Key Personnel are unable to perform the work for any reason.

12. Describe its willingness and ability to meet with the Contract Monitor and/or other Department staff on a non-scheduled, short notice (emergency) basis. Include in this description the personnel in addition to the Contract Manager who typically would attend such meetings.
13. Describe its capability and willingness to track all work by work category (MCO AUP Reviews, DSH Audits, MLR Examinations, Support Services or Special Projects), Labor Classification, and total effort, both monthly and cumulatively Contract Period-to-Date.
14. Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
15. Describe its capability and willingness to permit Department personnel to manipulate, reconfigure, and/or extract data, materials, etc., from its electronic files as long as the original files are not changed, as described in Section 2.3.1.11.4.B.

G. Experience and Qualifications of Proposed Staff (Submit under TAB F)

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in Section 3.10.3. Specifically, the Offeror shall:

- 1) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
- 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s).
- 4) Provide a copy of certification by the Maryland Board of Accountancy for each CPA proposed to work under the Contract.
- 5) Provide documentation of membership in one or more CPA professional associations and hours of Continuing Professional Education (CPE) held by the Offeror's proposed CPA personnel, including descriptions of all professional associations referenced as having provided such CPE.

H. Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in Section 3.10.1. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- 1) The number of years the Offeror has provided similar goods and services;
- 2) The number of clients/customers and geographic locations that the Offeror currently serves;
- 3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract;
- 4) The Offeror's process for resolving billing errors; and
- 5) An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

I. References (Submit under TAB H)

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP Section 1) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- 3) Value, type, duration, and description of goods and services provided.

The Maryland Department of Health reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

J. List of Current or Prior State Contracts (Submit under TAB I)

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- 1) The State contracting entity;
- 2) A brief description of the goods and services provided;
- 3) The dollar value of the contract;
- 4) The term of the contract;
- 5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- 6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

K. Financial Capability (Submit under TAB J)

The Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

L. Certificate of Insurance (Submit under TAB K)

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.6. See Section 3.6 for the required insurance certificate submission for the apparent awardee.

M. Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.

N. Legal Action Summary (Submit under TAB M)

This summary shall include:

- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- 2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- 3) A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and
- 4) In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.
- 5) If an Offeror responds to this TAB with a generic statement such as, "See 10K" or "See SEC filing":
 - The referenced document must be included in the Technical Proposal.
 - The location within the document where the requested information can be found should be specifically noted.

- The information contained in the indicated section should be responsive to the information requested under this TAB. A generic statement in the document to the effect that there often are what might be called nuisance lawsuits filed against the Offeror will only be sufficient if it is a true statement. i.e., the Offeror is asserting that in its opinion no lawsuit filed against it is noteworthy.

O. Economic Benefit Factors (Submit under TAB N)

- 1) The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from Attachment B-3, the Financial Proposal Form. See COMAR 21.05.03.03A (3).
- 2) Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
- 3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
- 4) As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
- 5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
 - a) generic statements that the State will benefit from the Offeror's superior performance under the Contract;
 - b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
 - c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
- 6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.
- 7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
 - a) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
 - b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the

aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;

- c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- d) Subcontract dollars committed to Maryland small businesses and MBEs; and
- e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)

- 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.

5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in Attachment B-3. The Offeror shall complete the Attachment B-3 Financial Proposal Form only as provided in the Financial Proposal Instructions - Attachments B-1 and B-2 - and the Attachment B-3 Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the [Maryland Department of Health](#).

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

6 Evaluation and Selection Process

6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Maryland Department of Health reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

6.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP § 5.3.2.F, except for F 8 that is listed under Section 6.2.5.)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.G)

6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H, I, J, K, L, M and N)

6.2.5 Enhanced Liquidated Damages Guarantees (See RFP § 5.3.2.F 8)

6.2.6 Economic Benefit to State of Maryland (See RFP § 5.3.2.O)

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 6.5.2.D) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on Attachment B-3 - Financial Proposal Form.

6.4 Reciprocal Preference

6.4.1 Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;

- C. The other state gives a preference to its resident businesses through law, policy, or practice; and
- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.

6.4.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

6.5 Selection Procedures

6.5.1 General

- A. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
- E. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

6.5.2 Selection Process Sequence

- A. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed, if there is an MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.
- B. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

6.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the

responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments and Appendices**.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

7 RFP ATTACHMENTS AND APPENDICES

Instructions Page

In order to assist Offerors in responding to Maryland procurements conducted by Competitive Sealed Proposals (CSP), this Section contains a table that lists all attachments and appendices, including any applicable instructions and/or terms, that are identified throughout this RFP, including ones - usually identified in Section 4 - for which the notation is that they don't apply to the current procurement. The third column identified as "Label", indicates where the respective attachment or appendix appears in the RFP.

The first column on the below table has the heading "Applies?", meaning that the respective item either does or does not apply to the current procurement. Items identified with a "Y" (for yes) apply and items with a "N" (for no) do not apply. For items identified with Y, meaning they apply, Offerors should look at the second - "When to Submit" - column on the table to determine whether an action is needed by them, and if so, when.

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as "with Proposal" in the "When to Submit" column in Table below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the "Applies" and "Label" columns in Table.

For documents required as part of the Proposal:

For e-mail submissions, submit one (1) copy of each with signatures.

For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table below in the "When to Submit" column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table below in the "When to Submit" column.

Table: RFP ATTACHMENTS AND APPENDICES

| Applies? | When to Submit | Label | Attachment Name |
|----------|---|-------|--|
| Y | Before Proposal | A | Pre-Proposal Conference Response Form |
| Y | With Proposal | B | Financial Proposal Instructions and Form |
| Y | With Proposal | C | Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf) |
| Y | With Proposal | D | MBE Forms D-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |
| Y | As directed in forms | D | MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |
| Y | With Proposal | E | Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) |
| Y | 5 Business Days after recommended award | E | VSBE Forms E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) Important: Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award. |

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

| | | | |
|---|--|---|---|
| Y | With Proposal | F | Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf) |
| Y | With Proposal | G | Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf) |
| Y | With Proposal | H | Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf) |
| Y | 5 Business Days after recommended award – However, suggested with Proposal | I | Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf) |
| Y | 5 Business Days after recommended award – However, suggested with Proposal | J | HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf) |
| N | With Proposal | K | Mercury Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf) |
| Y | With Proposal | L | Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf) |
| Y | 5 Business Days after recommended award | M | Sample Contract (included in this RFP) |
| Y | 5 Business Days after recommended award | N | Contract Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf) |
| N | 5 Business Days after recommended award | O | DHS Hiring Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf) |

| Appendices | | | |
|------------------------|--|-------|---|
| Applies? | When to Submit | Label | Attachment Name |
| Y | n/a | 1 | Abbreviations and Definitions (included in this RFP) |
| Y | With Proposal | 2 | Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf) |
| Y | Before Proposal, as directed in the RFP. | 3 | Non-Disclosure Agreement (Offeror) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-3-Non-Disclosure-Agreement-Offeror-1.dotx) |
| Y | With Proposal | 4 | Labor Resume Form (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-xx-Labor-Resume-Form.dotx) |
| Y | Schedule | 5 | MCO and DSH Events Schedule |
| Additional Submissions | | | |
| Applies? | When to Submit | Label | Document Name |
| Y | 5 Business Days after recommended award | | Evidence of meeting insurance requirements (see Section 3.6); 1 copy |
| Y | 10 Business Days after recommended award | | PEP; 1 copy |

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Attachment A. Pre-Proposal Conference Response Form

Solicitation Number MDH-OPASS-20-

Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals

A Pre-Proposal conference will be held on <<preProposalDate>>, at **201 West Preston Street, Room LX, Baltimore, MD 21202**

Please return this form by <<preProposalFormDue>>, advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

Calvin T. Johnson, MS, CNP
Procurement Officer II
Office of Procurement and Support Services
Maryland Department of Health (MDH)
201 W. Preston Street, Room 416
Baltimore, MD 21201
E-mail: calvin.johnson@maryland.gov

Please indicate:

_____ Yes, the following representatives will be in attendance.

Attendees (Check the RFP for limits to the number of attendees allowed):

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1“Pre-Proposal conference”):

Prospective Offeror:

Prospective Offeror Name (please print or type)

By:

Signature/Seal

Printed Name:

Printed Name

Title:

Title

Date:

Date

Directions to the Pre-Proposal Conference

<<preProposalDirections>>

Attachment B. Financial Proposal Instructions & Form

B-1 General Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror's TOTAL PROPOSAL PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03.F, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be Fully Loaded (Also see the Fully Loaded explanation in Item A.1 on Attachment B-2.) prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Maryland Department of Health does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.

K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

B-2 Detailed Financial Proposal Instructions

Offerors are to enter the following on the Attachment B-3 Price Form for each respective Contract Period.

A. MCO AUP Review Pricing

1. Enter a Fully Loaded Hourly Rate for each of the 6 listed Labor Classifications.
“Fully Loaded” means that the quoted hourly rate by Labor Classification is to include all direct and indirect costs (costs of benefits such as health, dental, pharmacy, etc., insurance, paid holidays, and vacation, sick, bereavement, etc., leave and required tax contributions such as Social Security, Workers Compensation and Unemployment insurance.) to perform the required work, except for any rates separately requested on this form. Included within this rate would be any needed administrative support (clerical, secretarial, human resources, payroll, recruiting, training, etc.) costs needed to produce an Agreed Upon Procedure (AUP) Review of a single MCO, as well as any Offeror desired allocated level of profit.

(Although these six (6) Labor Classifications hourly rates appear on the MCO AUP Review and MLR Examination price form, they will also apply to DSH Audits and Special Projects Contract activities involving Labor Classification hours, as well as Support Services activities that are paid at individual Labor Classification hourly rates rather than the single blended hourly rate for PIA Support described in Section 2.3.4.1.2 that is to be quoted on these Price Forms.)

2. The maximum (Not-to-Exceed – see Section 2.3.6.3) number of hours of each of the 6 listed Labor Classifications that the Offeror projects will be required to produce a single MCO AUP Review that is acceptable to the Contract Monitor.
3. A single Firm Fixed Actuarial Services Price.
4. Using the prices indicated in the above 3 items, embedded formulas in the Excel spreadsheet (Price Form) will calculate:
 - a. The total number of hours projected to be employed to produce an Agreed Upon Procedures Review of a single MCO that is accepted by the Contract Monitor as having been properly completed.
 - b. The percentages of the total number of hours to produce a single MCO AUP Review that is attributable to each of the 6 labor classifications. This percentage, rounded to the nearest tenth of a percent, will constitute the Staff Mix Percentage that cannot be exceeded when the Contractor invoices for work performed under the Contract, as described in Section 2.3.2.6.4.
 - c. An MCO Agreed Upon Procedures Review Labor Subtotal. This subtotal will be produced by the formula multiplying the respective Labor Classification rates times the maximum (Not-to-Exceed) listed number of hours per Labor Classification.

5. The Excel formula calculated MCO AUP Review Labor Subtotal will be added to the Firm Fixed Actuarial Services Price to produce a Total Not-to-Exceed Price per MCO AUP Review.
6. The Excel formula will multiply the Total Not-to-Exceed Price per MCO AUP Review times 9 MCOs to produce a Total Not-to-Exceed Contract Period (1-7) MCO AUP Review Price.

B. Medical Loss Ratio (MLR) Examination Report Pricing

1. All the same pricing as described in A, above, for MCO AUP Review pricing will also apply to MLR Examination Reports, except for the Firm Fixed Actuarial Services Price.

i.e., Offerors will enter the maximum number of hours for each of the 6 Labor Classifications to be used to complete a single MLR Examination Report.

2. The embedded Excel formulas will calculate the:
 - I. Appropriate MLR Examination Report Staff Mix Percentages
 - II. The Not-to-Exceed Contract Period (1-7) Price per MLR Examination Report by multiplying the Labor Classification hourly rates described in A.1 of these instructions times the respective maximum number of hours per Labor Classification described in B.1, above.
3. The embedded Excel Formula will multiply the Not-to-Exceed Contract Period (1-7) Price per MLR Examination Report times 9 to produce a Total Evaluated Contract Period (1-7) MLR Examination Report Price.

C. DSH Audit Pricing

1. All the same pricing as described in A, above, for MCO AUP Review pricing will also apply to DSH Audits, except for the Firm Fixed Actuarial Services Price.

i.e., Offerors will enter the maximum number of hours for each of the 6 labor classifications to be used to complete a single DSH Audit.

2. The embedded Excel formulas will calculate the:
 - I Appropriate DSH Audit Staff Mix Percentage
 - II. The Not-to-Exceed Contract Period (1-7) Price per DSH Audit by multiplying the Labor Classification hourly rates described in A.1 of these instructions times the respective maximum number of hours per Labor Classification described in C.1, above.

3. The embedded Excel Formula will multiply the Not-to-Exceed Contract Period (1-7) Price per DSH Audit times 31 to produce a Total Evaluated Contract Period (1-7) DSH Audit Price.

D. Firm Fixed Annual and Monthly Administrative Fees

1. While this Fee is primarily intended to be for Offerors to quote a price for the activities of their Project Manager, they are free to include whatever activities they want in this fixed fee, such as information technology expenses.
2. Whereas, as described in Sections 4-6 of this Section B-2 D, there will be a Maximum Allowable Price for the Annual and Monthly Administrative Fees, Offerors may quote any price they choose that is at or below the Maximum Allowable Annual Administrative Fee Level, including no charge. The quoted Annual Administrative Fee for each respective Contract Period, or the Maximum Allowable Annual Administrative Fee as described in Section B-2, D-3, below, will then be a firm fixed price that is not adjustable for any reason.
3. If despite the instructions in this section an Offeror quotes an Annual Administrative Fee that exceeds the calculated Maximum Allowable fee level, this amount will be adjusted downward to the Maximum Allowable Annual Fee level.
4. However, to prevent Offerors from “frontloading” these Fees and minimizing the prices of the MCO or DSH components, this Administrative Fee cannot exceed the hourly rate the Offeror quoted for the Audit Manager (or Supervising Auditor if an Audit Manager is not used or priced) Labor Classification for the respective Contract Period, times 2080 hours, times 120% to produce the Maximum Allowable Annual Administrative Fee.
5. The Annual Administrative Fee for each Contract Period is divided by 12 to produce a Monthly Administrative Fee (the portion of the Annual Administrative Fee that is billable/payable each month.)
6. As an example, if an Offeror quoted \$150 per hour for an Audit Manager in a particular Contract Period, \$150 times 2080 hours (40 hours per week times 52 weeks) = \$312,000 times 120% = \$374000 as the Maximum Allowable Annual Administrative Fee for that Contract Period, and that amount \div 12 = \$31,200 as the Maximum Allowable Monthly Administrative Fee.

E. Special Projects Pricing

1. As indicated in Section 2.3.5, for pricing purposes it will be assumed that 500 hours will be used for Special Projects in each Contract Period.
2. Offerors should apportion these 500 hours into each of 3 or 4 Labor Classifications – Audit Manager, Supervising Auditor, Senior Auditor and possibly Junior Auditor. Entry Level Auditors and Auditor Interns may not be used for Special Projects.
3. For each Labor Classification that an Offeror has proposed using for Special Project work, an Embedded Excel formula will multiply the indicated number of hours for

each respective Labor Classification from step 2 in this section times the hourly price entered as described in A.1 of these instructions to produce a Total Evaluated Contract Period (1-7) Special Projects Price.

4. An Embedded Excel formula will also calculate the Staff Mix Percentage for Special Projects for each respective Contract Period, in the same way as explained for the MCO component in part A, above.

F. Support Services Pricing

1. For pricing purposes, as indicated on the Price form, it is estimated that 200 hours per Period will be used for Support Services for other than appearing as witnesses or otherwise assisting in the preparation for administrative hearings or other legal proceedings. (As per Section 2.3.4.1, persons appearing as witnesses or otherwise assisting with the preparation for legal proceedings or for assessing the impact of regulation changes will be paid at their appropriate hourly rate for their Labor Classification for the appropriate Contract Period.)
2. As indicated on the B-3 price form, Offerors are to quote a single rate for PIA Request support services work.
3. An embedded Excel formula will multiply the single quoted hourly support services rate for each respective Contract Period times 200 hours to produce a Total Evaluated Contract Period (1-7) Support Services Price

G. Total Evaluated Contract Period (1-7) Pricing

An embedded Excel formula will add the following total prices for each respective Contract Period to produce a Total Evaluated Price for each Contract Period:

- 1.The Total MCO AUP Review Price
- 2.The Total MLR Examination Report Price
- 3.The Total DSH Audit Price
- 4.The Annual Administrative Fee
- 5.The Total Special Projects Price
- 6.The Total Support Services Price

H. Total Proposal Price

An embedded Excel formula will automatically add the Total Evaluated Price for each of the possible 7 Periods of the Contract to produce a Total Proposal Price. As defined in Exhibit 1, the Total Proposal Price will constitute each Offeror's Financial Proposal and will be used in conjunction with each Qualified Offeror's Technical Proposal ranking in the determination of which Qualified Offeror has submitted the overall Most Advantageous Offer and hence will be recommended for Contract award.

B-3 Financial Proposal Form

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Attachment B-1 and B-2 Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled B-3 FINANCIAL PROPOSAL FORM - WORKBOOK.xls.

Submitted by:

Offeror:

Offeror Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

Attachment C. Proposal Affidavit

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/proposal on this project, the Bidder/Offeror has considered all Bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal. As part of its Bid/proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid/proposal;

- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract;
or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Attachment C – Bid/Proposal Affidavit Page C-2 effective date: October 24, 2017

Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or

- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1) -(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
- (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;

- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability

under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person’s involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
 - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
-
-

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17- 705, Annotated Code of Maryland:
 - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
 - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

In preparing its bid/proposal on this project, the Bidder/Offeror has considered all bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for bid/proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the bid/proposal.

N. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or bid/proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

By: _____
Signature of Authorized Representative and Affiant

Printed Name: _____
Printed Name of Authorized Representative and Affiant

Title: _____
Title

Date: _____
Date

Attachment D. Minority Business Enterprise (MBE) Forms

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 25 percent and all of the following subgoals:

**D-1A
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE
PART 1 - INSTRUCTIONS**

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more

general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.

5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.
- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
 - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
 - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
 - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
 - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.

http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**
 - ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

Example for illustrative purposes of applying the 60% rule:
Overall contract value: \$2,000,000
Total value of supplies: \$100,000
Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%

Complete PART 3 MBE PARTICIPATION item B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).

Total percentage of Supplies/Products 5% x 60% = 3%
 - ✓ **Manufacturer**: A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
 - ✓ **Broker**: With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies,

fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.

✓ **Furnish and Install and other Services:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.

- Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

- CAUTION:** The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, **MUST** meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
- If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

| | | |
|--|-----------|----------|
| Total African American MBE Participation: | <u>7</u> | <u>%</u> |
| Total Asian American MBE Participation: | <u>4</u> | <u>%</u> |
| Total Hispanic American MBE Participation: | <u>0</u> | <u>%</u> |
| Total Women-Owned MBE Participation: | <u>12</u> | <u>%</u> |

Overall Goal

| | | |
|---|-----------|----------|
| Total MBE Participation (include all categories): | <u>25</u> | <u>%</u> |
|---|-----------|----------|

PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

In connection with the bid/proposal submitted in response to Solicitation No. MDH-OPASS-20- I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent and all of the following subgoals:

- 7 percent for African American-owned MBE firms
- 0 percent for Hispanic American-owned MBE firms
- 4 percent for Asian American-owned MBE firms
- 12 percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

OR

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

Additional MBE Documentation

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

Information Provided to MBE firms

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

| Prime Contractor | Project Description | Project/Contract Number |
|---|---|-------------------------|
| Offeror Company Name, Street Address, Phone | Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) | MDH-OPASS-20- |

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. MBE PRIMES: PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

| | |
|---|--|
| <p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p><input type="checkbox"/> (If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p> | <p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in Part 1-Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> |
|---|--|

| | |
|--|---|
| | <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___ %</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____</p> |
|--|---|

SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

| | |
|---|---|
| <p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p> | <p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___ %</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____</p> |
| <p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> | <p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is</p> |

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

| | |
|---|---|
| <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification NAICS code: _____ | <p>self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____</p> |
| <p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <p>NAICS code: _____</p> | <p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%) <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____</p> |
| <p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> | <p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) |

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

| | |
|--|---|
| <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p> | <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____</p> |
|--|---|

CONTINUE ON SEPARATE PAGE IF NEEDED

PART 4 – SIGNATURE PAGE

To complete Affidavit committing to MBE(s) or requesting waiver, Bidder/Offeror must sign below:

I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

D-1B WAIVER GUIDANCE

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

I. Definitions

MBE Goal(s) – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

Good Faith Efforts - The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether the Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Offeror has made. The efforts employed by the Offeror should be those that one could reasonably expect the Offeror to take if the Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Offeror's good faith efforts is a judgment call; meeting quantitative formulas are not required.

Identified Firms – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

Identified Items of Work – “Identified Items of Work” means the Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

MBE Firms – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

II. Types of Actions Agency will Consider

The Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE

subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Offeror's Good Faith Efforts when the Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements

- (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
- (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

2. Identified Items of Work by Offerors

- (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
- (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the

Identified Items of Work.

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
 - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
 - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
 - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
 - (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
 - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
 - (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
 - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal

minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate with Interested MBE Firms

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
 - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
 - (d) number of MBE firms that the Offeror solicited for that portion of the work;
 - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at

least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.

7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
 - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
 - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBR Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other Proposals or offers and subcontract Proposals or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether the Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Offerors in meeting the contract. For example, when the apparent successful Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

IV. Documenting Good Faith Efforts

At a minimum, the Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 Business Days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
 - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
 - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**D-1B - Exhibit A
MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of _____
(Name of Minority firm)

located at _____
(Number) (Street)

(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. **MDH-OPASS-20-**

in _____ County by _____
(Name of Prime Contractor's Firm)

2. _____(Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

(Signature of Minority Firm's MBE Representative) (Title) (Date)

(MDOT Certification #) (Telephone #)

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

(Signature of Prime Contractor)

(Title)

(Date)

**D-1C
 GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE __ OF __

| Prime Contractor: | Project Description: | Project/Contract Number: |
|---|--|---------------------------------|
| Offeror Company Name, Street Address, Phone | Medicaid Agreed Upon Procedures, Related Accounting And Consulting Services For Managed Care Organizations (MCOs) And Disproportionate SHARE Hospitals (DSH) | MDH-OPASS-20- |

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form is true to the best of my knowledge, information, and belief.

Company:

 Company Name (please print or type)

By:

 Signature of Authorized Representative

Printed Name:

 Printed Name

Title:

 Title

Date:

 Date

Address:

Company Address

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE __ OF __

| Prime Contractor: | Project Description: | Project/Contract Number: |
|---|---|---------------------------------|
| Offeror Company Name, Street Address, Phone | Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) | MDH-OPASS-20- |

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror’s responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

| Identified Items of Work | Was this work listed in the procurement? | Does Offeror normally self-perform this work? | Was this work made available to MBE Firms? If no, explain why not. |
|---------------------------------|--|--|---|
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

| | | | |
|--|--|--|--|
| | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--|--|--|--|

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE __ OF __

| Prime Contractor: | Project Description: | Project/Contract Number: |
|---|---|--------------------------|
| Offeror Company Name, Street Address, Phone | Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) | MDH-OPASS-20- |

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (**Attachment D-1B - Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

| Name of Identified MBE Firm & MBE Classification | Describe Item of Work Solicited | Initial Solicitation Date & Method | Follow-up Solicitation Date & Method | Details for Follow-up Calls | Quote Rec'd | Quote Used | Reason Quote Rejected |
|--|---------------------------------|---|---|--|---|---|--|
| Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification | | Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail | Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail | Time of Call: Spoke with: _____ <input type="checkbox"/> Left Message | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing |
| Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned | | Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail | Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail | Time of Call: Spoke with: _____ <input type="checkbox"/> Left Message | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE |

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification | | | | | | | <input type="checkbox"/> Self-performing |
|--|--|--|--|--|--|--|--|

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE __ OF __

| Prime Contractor: | Project Description: | Project/Contract Number: |
|---|---|---------------------------------|
| Offeror Company Name, Street Address, Phone | Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) | MDH-OPASS-20- |

This form must be completed if Part 1 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

| Describe Identified Items of Work Not Being Performed by MBE (Include spec/ section number from Proposal) | Self-performing or Using Non-MBE (Provide name) | Amount of Non-MBE Quote | Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE | Amount Quoted | Indicate Reason Why MBE Quote Rejected & Briefly Explain |
|--|---|--------------------------------|---|----------------------|---|
| | <input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____ | \$ _____ | _____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE | \$ _____ | <input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other |
| | <input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____ | \$ _____ | _____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE | \$ _____ | <input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other |
| | <input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____ | \$ _____ | _____ <input type="checkbox"/> MBE | \$ _____ | <input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other |

| | | | | | |
|--|---|----------|---|----------|---|
| | <input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____ | \$ _____ | <input type="checkbox"/> Non-MBE _____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE | \$ _____ | <input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other |
| | <input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____ | \$ _____ | <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE _____ | \$ _____ | <input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other |
| | <input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____ | \$ _____ | <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE _____ | \$ _____ | <input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other |

Please check if Additional Sheets are attached.

D- 2
OUTREACH EFFORTS COMPLIANCE STATEMENT

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. **MDH-OPASS-20-** , I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with Proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

5. Please Check One:

- Offeror did attend the pre-Proposal conference.
- No pre -Proposal meeting/conference was held.
- Offeror did not attend the pre-Proposal conference.

PLEASE PRINT OR TYPE

Company:

Company Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

D-3A
MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

Please complete and submit one form for each certified MBE firm listed on the MBE Participation schedule (Attachment D-1A) within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.

Provided that _____ (Prime Contractor’s Name) is awarded the State contract in conjunction with Solicitation No. **MDH-OPASS-20-** _____, such Prime Contractor intends to enter into a subcontract with _____ (Subcontractor’s Name) committing to participation by the MBE firm _____ (MBE Name) with MDOT Certification Number _____ which will receive at least \$_____ which equals to ___% of the Total Contract Amount for performing the following goods and services for the Contract:

| NAICS CODE | WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) | DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES |
|------------|--|--|
| | | |
| | | |
| | | |
| | | |

Each of the Contractor and subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Proposal.

Prime Contractor

Company:

Company Name (please print or type)

FEIN:

Federal Identification Number

Phone Number:

Phone Number

By:

Signature of Authorized Representative

Date:

Date

Printed Name:

Printed Name

Title:

Printed Title

Address:

Company Address

Subcontractor

Company:

Company Name (please print or type)

FEIN:

Federal Identification Number

Phone Number:

Phone Number

By:

Signature of Authorized Representative

Date:

Date

Printed Name:

Printed Name

Title:

Printed Title

Address:

Company Address

D-3B
MBE PRIME PROJECT PARTICIPATION CERTIFICATION

Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment D-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.

Provided that _____ (Prime Contractor’s Name) with Certification Number _____ is awarded the State contract in conjunction with Solicitation No. _____, such MBE Prime Contractor intends to perform with its own forces at least \$_____ which equals to ___% of the Total Contract Amount for performing the following goods and services for the Contract:

| NAICS CODE | WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately | DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES | VALUE OF THE WORK |
|------------|---|--|-------------------|
| | | | |
| | | | |
| | | | |
| | | | |

MBE Prime Contractor

Company:

Company Name (please print or type)

FEIN:

Federal Identification Number

Address:

Company Address

Phone:

Phone

Printed Name:

Printed Name

Title:

Title

By:

Signature of Authorized Representative

Date:

Date

**D-4A
 Minority Business Enterprise Participation
 MBE Prime Contractor Paid/Unpaid Invoice Report**

| | |
|--|---|
| Report #: | Contract #: MDH-OPASS-20- |
| Reporting Period (Month/Year): | Contracting Unit: MDH MCP Office of Finance |
| Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence | Contract Amount: |
| | MBE Subcontract Amt: |
| | Project Begin Date: |
| | Project End Date: |
| | Services Provided: |

| | |
|--|--|
| Prime Contractor: | Contact Person: |
| Address: | |
| City: | State: ZIP: |
| Phone: | FAX: E-mail: |
| Subcontractor Services Provided: | |
| List all payments made to MBE subcontractor named above during this reporting Period: | List dates and amounts of any outstanding invoices: |
| Invoice # | Amount |
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |
| 4. | 4. |
| Total Dollars Paid: \$ | Total Dollars Paid: \$ |

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

| | |
|-----------------------|------------------|
| Contract Monitor Name | Contracting Unit |
| Address | City, State Zip |
| Email | Phone Number |
| Signature (Required) | Date |

**D-4B
 Minority Business Enterprise Participation
 MBE Prime Contractor Report**

| | |
|--|--|
| MBE Prime Contractor: | Contract #: MDH-OPASS-20- |
| Certification Number: | Contracting Unit: MDH MCP Office of Finance |
| Report #: | Contract Amount: |
| Reporting Period (Month/Year): | Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals. |
| MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence | Project Begin Date: |
| | Project End Date: |
| | |

| | | |
|-----------------|--------|---------|
| Contact Person: | | |
| Address: | | |
| City: | State: | Zip: |
| Phone: | Fax: | E-mail: |

| Invoice Number | Value of the Work | NAICS Code | Description of Specific Products and/or Services |
|----------------|-------------------|------------|--|
| | | | |
| | | | |
| | | | |
| | | | |

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor Name

Contracting Unit

Address

City, State Zip

Email

Phone Number

Signature (Required)

Date

D-5
Minority Business Enterprise Participation
MBE Subcontractor Paid/Unpaid Invoice Report

| | |
|--|---|
| Report #: | Contract #: MDH-OPASS-20- |
| Reporting Period (Month/Year): | Contracting Unit: MDH MCP Office of Finance |
| Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. | MBE Subcontract Amt: |
| | Project Begin Date: |
| | Project End Date: |
| | Services Provided: |

| | | | | | |
|--|-----------------------|-------------|--|-----------------------|-------------|
| MBE Subcontractor Name: | | | | | |
| MDOT Certification #: | | | | | |
| Contact Person: | | | | | |
| Address: | | | | | |
| City: | | | State: | | ZIP: |
| Phone: | | FAX: | | E-mail: | |
| Subcontractor Services Provided: | | | | | |
| List all payments received from Prime Contractor during s reporting Period indicated above. | | | List dates and amounts of any unpaid invoices over 30 days old. | | |
| | Invoice Amount | Date | | Invoice Amount | Date |
| 1. | | | 1. | | |
| 2. | | | 2. | | |
| 3. | | | 3. | | |
| 4. | | | 4. | | |
| Total Dollars Paid: \$ | | | Total Dollars Paid: \$ | | |
| Prime Contractor: | | | Contact Person: | | |

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor Name

Contracting Unit

Address

City, State Zip

Email

Phone Number

Signature (Required)

Date

Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms

This solicitation includes a VSBE participation goal of 1%.

**E-1A
VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule**

(submit with Bid/Proposal)

This document **MUST BE** included with the Proposal. If the Offeror fails to complete and submit this form with the Proposal, the procurement officer may determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Proposal submitted in response to Solicitation No. MDH-OPASS-20-, I affirm the following:

I acknowledge and intend to meet the overall verified VSBE participation goal of ____%. Therefore, I will not be seeking a waiver.

OR

I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 Business Days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.

2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.

(a) Subcontractor Project Participation Statement (**Attachment E-2**); and

(b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotations or offers, VSBE subcontractors were provided not less than the same information and amount of time to respond as were non-VSBE subcontractors.

4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those goods and services for which they are verified.

E-1 VSBE Subcontractor Participation Schedule

| Prime Contractor: | Project Description: | Project/Contract Number: |
|---|---|---------------------------------|
| Offeror Company Name, Street Address, Phone | Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) | MDH-OPASS-20- |

List Information for Each Verified VSBE Prime Contractor or Subcontractor On This Project

| | |
|-------------------------------|--------------------------------------|
| Name of Veteran-Owned Firm: | DUNS Number: |
| Percentage of Total Contract: | Description of work to be performed: |
| Name of Veteran-Owned Firm: | DUNS Number: |
| Percentage of Total Contract: | Description of work to be performed: |
| Name of Veteran-Owned Firm: | DUNS Number: |
| Percentage of Total Contract: | Description of work to be performed: |
| Name of Veteran-Owned Firm: | DUNS Number: |
| Percentage of Total Contract: | Description of work to be performed: |
| Name of Veteran-Owned Firm: | DUNS Number: |
| Percentage of Total Contract: | Description of work to be performed: |
| Name of Veteran-Owned Firm: | DUNS Number: |
| Percentage of Total Contract: | Description of work to be performed: |

Continue on a separate page, if needed.

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

PLEASE PRINT OR TYPE

Company: _____
Company Name (please print or type)

Printed Name: _____
Printed Name

Title: _____
Title

Address: _____
Company Address

By: _____
Signature of Authorized Representative

Date: _____
Date

**E-1B
VSBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of _____
(Name of Veteran-owned firm)

located at _____
(Number) (Street)

(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. **MDH-OPASS-20-**

in _____ County by _____
(Name of Prime Contractor's Firm)

***** 2.

(Veteran-owned Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

(Signature of Veteran-owned firm's VSBE Representative) (Title) (Date)

(USDVA #) (Telephone #)

3. To be completed by the prime contractor if Section 2 of this form is not completed by the veteran-owned firm.

To the best of my knowledge and belief, said Veteran-Owned Small Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

(Signature of Prime Contractor)

(Title)

(Date)

**E-2
 VSBE Subcontractor Participation Statement**

Please complete and submit one form for each verified VSBE listed on E-1 within 10 Business Days of notification of apparent award.

_____ (prime contractor) has entered into a contract with
 _____ (subcontractor) to provide services in connection with the Solicitation described below.

| | |
|---|--|
| Prime Contractor (Firm Name, Address, Phone): | Project Description: Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH) |
| Project Number MDH-OPASS-20- | Total Contract Amount: \$ |
| Name of Veteran-Owned Firm: | DUNS Number: |
| Address: | FEIN: |
| Work to Be Performed: | |
| Percentage of Total Contract Amount: | Total Subcontract Amount: \$ |

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

Prime Contractor

Subcontractor

Printed Name: _____

Printed Name

Printed Name: _____

Printed Name

Title: _____

Printed Title

Title: _____

Printed Title

By: _____

Signature of Authorized Representative

By: _____

Signature of Authorized Representative

Date: _____

Date: _____

Date

Date

**E-3
 Veterans Small Business Enterprise (VSBE) Participation
 VSBE Prime Contractor Paid/Unpaid Invoice Report**

| | |
|---|---|
| Report #: | Contract #: MDH-OPASS-20- |
| Reporting Period (Month/Year): | Contracting Unit: MDH MCP Office of Finance |
| Prime Contractor: Report is due to the Contract Monitor by the 10th of the month following the month the services were provided. Note: Please number reports in sequence | Contract Amount: |
| | MBE Subcontract Amt: |
| | Project Begin Date: |
| | Project End Date: |
| | Services Provided: |

| | | | |
|---|------------------|--|----|
| Prime Contractor: | | Contact Person: | |
| Address: | | | |
| City: | | State: | |
| Phone: | | FAX: | |
| VSBE Subcontractor Name: | | Contact Person: | |
| Phone: | | FAX: | |
| Subcontractor Services Provided: | | E-mail: | |
| List all payments made to VSBE subcontractor named above during this reporting Period: | | List dates and amounts of any outstanding invoices: | |
| | Invoice # | Amount | |
| | Invoice # | Amount | |
| 1. | | | 1. |
| 2. | | | 2. |
| 3. | | | 3. |
| 4. | | | 4. |
| Total Dollars Paid: \$ | | Total Dollars Paid: \$ | |

- If more than one VSBE subcontractor is used for this contract, you must use separate **Attachment E-3** forms.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

Contract Monitor

Contracting Unit

Address

City, State Zip

Email

Phone Number

Contractor Signature (Required)

Date

**E-4
 Veterans Small Business Enterprise (VSBE) Participation
 VSBE Subcontractor Paid/Unpaid Invoice Report**

| | | | | | |
|--|-----------------------|---|--|-----------------------|-------------|
| Report #: | | Contract #: MDH-OPASS-20- | | | |
| Reporting Period (Month/Year): | | Contracting Unit: MDH MCP Office of Finance | | | |
| Report is due by the 10th of the month following the month the services were provided. | | VSBE Subcontract Amt: | | | |
| | | Project Begin Date: | | | |
| | | Project End Date: | | | |
| Services Provided: | | | | | |
| VSBE Subcontractor Name: | | | | | |
| Department of Veterans Affairs Certification #: | | | | | |
| Contact Person: | | | | | |
| Address: | | | | | |
| City: | | | State: | | ZIP: |
| Phone: | | FAX: | | E-mail: | |
| Subcontractor Services Provided: | | | | | |
| List all payments received from Prime Contractor during s reporting Period indicated above. | | | List dates and amounts of any unpaid invoices over 30 days old. | | |
| | Invoice Amount | Date | | Invoice Amount | Date |
| 1. | | | 1. | | |
| 2. | | | 2. | | |
| 3. | | | 3. | | |
| 4. | | | 4. | | |
| Total Dollars Paid: \$ | | | Total Dollars Paid: \$ | | |
| Prime Contractor: | | | Contact Person: | | |

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

 Contract Monitor

 Address

 Email

 Contracting Unit

 City, State Zip

 Phone Number

 Contractor Signature (Required)

 Date

Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area,

or any successor index, for the previous calendar yearYear, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.

**MARYLAND LIVING WAGE AFFIDAVI OF AGREEMENT
FOR SERVICE CONTRACTS**

Contract No. MDH-OPASS-20-

Name of Contractor: _____

Address: _____

If the Contract Is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- Offeror is a nonprofit organization
- Offeror is a public service company
- Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract Is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and ensure that its subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____ (initial here if applicable) The Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract;
- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative: _____ Date: _____

Title: _____

Witness Name (Typed or Printed): _____

Witness Signature: _____ Date: _____

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment G. Federal Funds Attachments

A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all prospective and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form “Certification Against Lobbying.” It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: “Form LLL, Disclosure of Lobbying Activities” must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a “Certification Regarding Environmental Tobacco Smoke,” required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
 - A) Title 2 of the Code of Federal Regulations (CFR) 200, specifically Subpart D, requires that grantees (both recipients and sub-recipients) which expend a total of \$750,000 in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and Title 2 CFR 200, Subpart D. All sub-grantee audit reports, performed in compliance with Title 2 CFR 200 shall be forwarded within 30 days of report issuance to the Contract Monitor.
 - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
 - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- 1) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 2) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- 3) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- 4) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- 5) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- 6) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.
- 7) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 et seq.) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation- programs, activities, and facilities and employment. It states, among other things, that:

Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with

impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level II of the Federal Executive pay scale, per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally performed during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

GI
CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

| | |
|---|-----------------------------------|
| Award No. | Organizational Entry |
| Name and Title of Official Signing for Organizational Entry | Telephone No. Of Signing Official |
| Signature of Above Official | Date Signed |

G-2

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

| | | |
|--|--|--|
| <p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan guarantee <input type="checkbox"/> f. Loan insurance</p> | <p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. Bid/Offer/application <input type="checkbox"/> b. Initial award <input type="checkbox"/> c. Post-award</p> | <p>3. Report Type:</p> <p><input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. Material change</p> <p>For Material Change Only: Year _____ quarter _____ Date of last report _____</p> |
| <p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, <i>if known</i>:</p> | | <p>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, <i>if known</i>:</p> |
| <p>6. Federal Department/Agency:</p> | <p>7. Federal Program Name/Description:</p> <p>CFDA Number, <i>if applicable</i>: _____</p> | |
| <p>8. Federal Action Number, if known:</p> | <p>9. Award Amount, if known: \$ _____</p> | |
| <p>10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i></p> | <p>b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i></p> | |
| <p>11. Amount of Payment <i>(check all that apply)</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p> | <p>13. Type of Payment <i>(check all that apply)</i></p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p> | |
| <p>12. Form of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: nature _____ value: _____</p> | | |
| <p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p>(attach Continuation Sheet(s) SF-LLLA, if necessary)</p> | | |
| <p>15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> | | |
| <p>16. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p> | <p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p> | |
| <p>Federal Use Only</p> | | <p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p> |

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
11. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

12. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

G-3

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro Children Act of 1994, Part C Environmental Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the Offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

Signature of Authorized Certifying Individual

Attachment H. Conflict of Interest Affidavit and Disclosure

Attachment H. Conflict of Interest Affidavit and Disclosure

Reference COMAR 21.05.08.08

A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B (64) and includes a Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Proposal is made.

C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail —attach additional sheets if necessary):

E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment I. Non-Disclosure Agreement (Contractor)

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through the Maryland Department of Health (the “Department” or “Agency” or “Authority” or “Commission”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for **Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH)** (Solicitation Title) Solicitation # MDH-OPASS-20-_____ ; and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all personally identifiable information (PII) (including but not limited to personal information as defined in Md. Ann. Code, General Provisions §4-101(h) and Md. Ann. Code, State Govt. § 10-1301(c)) and protected health information (PHI) as defined in 45 CFR 160.103 that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.

2. The Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who are bound by confidentiality obligations at least as restrictive as those set forth in this Agreement. Contractor shall provide copies of such agreements to the State. The names of such personnel are attached hereto and made

a part hereof as **Attachment I-2**. Contractor shall update **Attachment I-2** by adding additional names (whether Contractor's Personnel or a subcontractor's personnel) as needed, from time to time.

3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor's performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. The Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. The Contractor shall, at its own expense, return to the State all Confidential Information in its care, custody, control or possession upon request of the State or on termination of the Contract.

7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.

8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold

harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.

- 9. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Agreement entered into by the parties.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor:

Department:

By:
(seal)

By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

I-3 NON-DISCLOSURE AGREEMENT

CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 20_____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

Attachment J. HIPAA Business Associate Agreement

This Business Associate Agreement (the “Agreement”) is made by and between the Maryland Department of Health (the “Department” or “Agency” or “Authority” or “Commission”) and _____ (Offeror/Company Name) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 et seq.) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, subcontractor, Unsecured Protected Health Information, and Use.

B. Specific definitions:

1. **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean _____ (Offeror/Company Name).

2. **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean the Maryland Department of Health.
3. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. **Protected Health Information (“PHI”).** Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2), for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State’s payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.

- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
 - C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
 - D1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- a. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
 - b. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
 - c. Is in substantially the same form as **ATTACHMENT J-1** attached hereto; and
 - d. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii. A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - iii. Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv. A brief description of what the Covered Entity and Business Associate are doing to investigate the Breach, mitigate losses, and protect against any further Breaches; and
 - v. Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.

- e. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- f. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- g. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- h. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- j. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- k. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION (CONTINUE FROM THIS POINT FORWARD)

Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for **Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH)**, Solicitation # **MDH-OPASS-20-_____**, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph B of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.

- A. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- B. Effect of Termination.
1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
 2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the Maryland Confidentiality of Medical Records Act (MCMRA), Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.
- C. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this

Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

[[Insert the name and contact information of the HIPAA contact person within the Agency or appropriate covered health care entity.]]

Name: _____

Address: _____

E-mail: _____

Phone: _____

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

J-1 FORM OF NOTIFICATION TO COVERED ENTITY OF BREACH OF UNSECURED PHI

This notification is made pursuant to Section III.D(3) of the Business Associate Agreement between the **Maryland Department of Health** and _____ (Business Associate).

Business Associate hereby notifies the **Maryland Department of Health** that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach:

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes/No If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: _____

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

E-mail Address: _____

Phone Number: _____

Attachment K. Mercury Affidavit

This solicitation does not require a Mercury Affidavit.

Attachment L. Location of the Performance of Services Disclosure

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Proposal submitted in response to Solicitation No. MDH-OPASS-20-_____, the following disclosures are hereby made:

1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:

___ have plans

___ have no plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Offeror or its proposed subcontractors, the Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

b. Reasons why it is necessary or advantageous to perform services outside the United States:

The undersigned, being an authorized representative of the Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: _____

Offeror Name: _____

By: _____

Name: _____

Title: _____

Please be advised that the State of Maryland may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States

exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

Attachment M. Contract

MARYLAND DEPARTMENT OF HEALTH (MDH)

“Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH)

MDH-OPASS-20-

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the **Maryland Department of Health (MDH)** or the **Medical Care Programs Office of Finance**.

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (**Contractor’s primary address**) and whose principal office in Maryland is (**Contractor’s local address**), whose Federal Employer Identification Number or Social Security Number is (**Contractor’s FEIN**), and whose eMaryland Marketplace vendor ID number is (**eMM Number**).
- 1.3 “Financial Proposal” means the Contractor’s Financial Proposal dated _____ (**Financial Proposal date**), as modified by any Best and Final Offer thereto.
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH), Solicitation # MDH-OPASS-20- , and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. _____ (**Technical Proposal date**), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the

Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

- 3.1 The term of this Contract begins on the date the Contract is signed by the **Maryland Department of Health** following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until _____ ("Initial Term").
- 3.2 In its sole discretion, the **Maryland Department of Health** shall have the unilateral right to extend the Contract for **one (1) two (2)-year** renewal option (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the **Maryland Department of Health** shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment

to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the **Maryland Department of Health**'s receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the **Maryland Department of Health** is not evidence that services were rendered as required under this Contract.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this

Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the **Maryland Department of Health** or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

7. Patents, Copyrights, and Intellectual Property

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the **Maryland Department of Health** or licensed by the **Maryland Department of Health** from third parties, including all information provided by the **Maryland Department of Health** to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the **Maryland Department of Health** will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-

terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4. Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5. Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7. The Contractor shall report to the **Maryland Department of Health**, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.

- 7.8 The Contractor shall not affix (or permit any third party to affix), without the **Maryland Department of Health**'s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the **Maryland Department of Health** shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract..
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

9. Loss of Data

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

10. Indemnification and Notification of Legal Requests

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter

into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law Prevails

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal period for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract

that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

19. Delays and Extensions of Time

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the

contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Retention of Records

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The **Maryland Department of Health** may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the **Maryland Department of Health's** election. The **Maryland Department of Health** may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the **Maryland Department of Health** has the right to audit such subcontractor(s).

26. Compliance with Laws

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Cost and Price Certification

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
 - (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 5 "Patents, Copyrights, Intellectual Property"** of this Contract;
 - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
 - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.3 The Contractor shall include the language from 30.1, or similar clause approved in writing by the **Maryland Department of Health**, in all subcontracts.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the **Maryland Department of Health**, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Take other or further actions as appropriate to resolve the withheld payment.

- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the **Maryland Department of Health** concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the **Maryland Department of Health** and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the **Maryland Department of Health**.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the **Maryland Department of Health** may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.Verification shall include a review of:
 - i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
 - (b) If the **Maryland Department of Health** determines that the Contractor is not in compliance with certified MBE participation goals, then the **Maryland Department of Health** will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (c) If the **Maryland Department of Health** determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the **Maryland Department of Health** requires, then the **Maryland Department of Health** may:
 - i. Terminate the Contract;

- ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the **Maryland Department of Health** may withhold payment of any invoice or retainage. The **Maryland Department of Health** may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the **Maryland Department of Health** does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

34. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

35. Effect of Contractor Bankruptcy

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

36. Miscellaneous

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

37. Contract Monitor and Procurement Officer

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The **Maryland Department of Health** may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The **Maryland Department of Health** may change the Procurement Officer at any time by written notice to the Contractor.

38. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Thelma McClellan, Deputy Director
Medical Care Programs, Office of Finance
Maryland Department of Health (MDH)
201 W. Preston Street – 2nd Floor
Baltimore, MD 21201
Phone Number: (410) 767-5192
E-Mail: thelmat.mcclellan@maryland.gov

With a copy to:

Dana Dembrow, Director
Office of Procurement and Support Services
Maryland Department of Health (MDH)
201 W. Preston Street – 4th Floor
Baltimore, MD 21201
Phone Number: (410) 767-5117
E-Mail: dhmh.solicitationquestions@maryland.gov

If to the Contractor:

(Contractor's Name) _____

(Contractor's primary address) _____

Attn: _____

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: _____

Attn: _____

39. Liquidated Damages for MBE

- 39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$<<insert value>> per day until the monthly report is submitted as required.
 - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$<<insert value>> per MBE subcontractor.
 - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
 - (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
 - (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$<<insert appropriate

rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid.

- 39.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

<<40.>> Parent Company Guarantee (If applicable)

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

41. Federal Department of Health and Human Services (DHHS) Exclusion Requirements

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this Contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this Contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the **Maryland Department of Health** immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

42. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

- 42.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;

- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

42.2 Based on the determination by the **Maryland Department of Health** that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by the **Maryland Department of Health**.

42.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

43. Limited English Proficiency

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Contractor

State of Maryland

MARYLAND DEPARTMENT OF HEALTH
(MDH)

By:

By: Robert R. Neall
Secretary Or Designee

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

By:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 20__.

Assistant Attorney General

APPROVED BY BPW: _____

(Date)

(BPW Item #)

Attachment N. Contract Affidavit

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation - domestic or foreign;
- (2) Limited Liability Company - domestic or foreign;
- (3) Partnership - domestic or foreign;
- (4) Statutory Trust - domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: _____

Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts,

leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
 - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
 - (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated _____, 201__ , and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Attachment O. DHS Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

Attachment P. Liquidated Damages

See separate Excel Attachment P Liquidated Damages chart.

Appendix 1. – Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

1. **Agreed Upon Procedures** – Audit standards outlined by MA and agreed upon by the Contractor and to a degree by CMS for the performance of audits of specific business processes of MCOs and DSHs. In performing these Procedures, the Contractor will report factual findings, not render formal audit Opinions, Conclusion or Assurances. However, the Contractor must attest to the accuracy of its factual findings. (Paraphrased from the American Institute of CPAs Statement on Standards for Attestation Engagements, primarily AT-C section 215, “Agreed Upon Procedures Engagements.”)
2. **Agreed Upon Procedures Review(s) – (AUP Review)** - An examination of the annual expenditures and other financial aspects of Maryland MCOs for designated periods using Agreed Upon Procedure protocols.
3. **AUP** – Agreed Upon Procedures
4. **American Institute of Certified Public Accountants (AICPA)** – The national professional organization of Certified Public Accountants in the United States, with more than 418,000 members in 143 countries in business and industry, public practice, government, education, student affiliates and international associates.
5. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
6. **CMS** – The Centers for Medicare and Medicaid Services, an agency of the U. S. Department of Health and Human Services.
7. **COMAR** – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
8. **Consulting Services** – Fact finding, problem solving, evaluating alternatives and recommending or implementing courses of action. The application of the technical skills, education, observation, experiences, and knowledge of the consulting process of the Contractor’s principals, staff or subcontractors in developing the findings, conclusions and recommendations the Contractor presents in its various reports. Competency, integrity, objectivity, and due professional care based upon sufficient relevant data shall afford reasonable support for any conclusions or recommendations by the Contractor. (Paraphrased from the American Institute of CPAs Statement on Standards for Consulting Services – CS-100.)
9. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
10. **Contract Commencement Date** -The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
11. **Contract Monitor** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State

representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Maryland Department of Health may change the Contract Monitor at any time by written notice to the Contractor.

12. **Contract Officer** – The State representative for this Contract who is designated and authorized by the Procurement Officer to act on behalf of the Procurement Officer. The Maryland Department of Health may change the Contract Officer at any time by written notice to the Contractor.
13. **Contract Period** – The first Contract Period is anticipated to be for 13 months from the expected NTP Date of 1/1/2021 to 1/31/2022. However, depending upon the exact NTP Date for this Contract, the first month of the first Contract Period may be longer or shorter than a full month in order for this first month of the first Contract Period to not be a partial month (not end part way through a month.) i.e., the first Contract Period will be adjusted to operate for full months. Thereafter, each Contract Period will be for twelve (12) months, for an expected total Contract term of five (5) years and one (1) month, (expected ending date of 1/31/2026), or seven (7) years and one (1) month (expected ending date of 1/31/2028), if the single two (2) year renewal option is exercised.
14. **Contractor** – The selected Offeror that is awarded a Contract by the State.
15. **Contractor Personnel** – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
16. **COOP** – Continuity of Operations Plan.
17. **Corrective Action Plan** – A detailed plan prepared by the Contractor and submitted to the Contract Monitor that describes the resources the Contractor will add and/or actions it will take to bring the Contractor back into compliance with one or more significant – as determined by the Contract Monitor - Contract requirements that it has failed to meet or for which advance indications are that it will fail to meet without enhanced effort. Corrective Action Plans are further described in Section 2.5.
18. **Disproportionate Share Hospital** – A program established by CMS whereby hospitals that treat a large (disproportionate) number of indigent patients receive some funding for such care.
19. **DSH** – Disproportionate Share Hospitals.
20. **Data Breach** – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
21. **eMMA** – eMaryland Marketplace Advantage (see RFP Section 4.2).
22. **Generally Accepted Accounting Principles (GAAP)** - refer to a common set of accounting principles, standards, and procedures issued by the Financial Accounting Standards Board (FASB).
23. **Generally Accepted Auditing Standards (GAAS)** - Are a set of systematic guidelines used by auditors when conducting audits on companies' financial records. **GAAS** helps to ensure the accuracy, consistency, and verifiability of auditors' actions and reports.
24. **HealthChoice** – Maryland's Medicaid Managed Care Program. The Program under which the MA Program contracts with Managed Care Organizations to act as Primary Care Providers (PCPs) to provide primary medical care to most Medicaid recipients.

25. **Incurred But Not Reported (IBNR) Liability** - The amount owed by an MCO to all valid claimants (Providers (2)), who have had a covered loss but have not yet reported it. Since the MCO knows neither how many of these losses have occurred, nor the severity of each loss, **IBNR** is necessarily an estimate. The IBNR liability calculation is an important aspect of the rate setting analysis for MCOs.
26. **Information Technology (IT)** – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
27. **ISP - Information Security Plan**
28. **Key Personnel** – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See **RFP Section 3.10**.
29. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
30. **Loss Adjusted Expense (LAE) Liability** - Is the cost borne by an MCO at the time of settling claims. MCOs need to prove the veracity of the event that has caused the Providers (2) to file a claim. MCOs need to investigate and verify the event before settling claims. This is a pivotal component as the absence of such a mechanism can lead to losses for an MCO which then must be accounted for in the capitated rate setting process.
15. **Managed Care Organization (MCO)** – A healthcare organization participating in the Maryland HealthChoice program that provides services to Medicaid recipients by contracting with a network of licensed/certified healthcare providers. The majority of Medicaid recipients receive medical care through MCOs. MCO and DSH Events Schedule – Appendix 5; list of important and pertinent events that occurs or must be provided for during the contract.
16. **MCOs** – Managed Care Organizations.
17. **MCO Review(s)** -means Agreed Upon Procedures Review(s) of Maryland Managed Care Organizations
18. **Maryland Department of Health** means MDH; or the Department or the Medical Care Programs Office of Finance.
19. **Medical Loss Ratio (MLR)** - A basic financial measurement used in the Affordable Care Act to encourage health plans to provide value to enrollees. If an insurer uses 80 cents out of every premium dollar to pay its customers' medical claims and activities that improve the quality of care, the company has a medical loss ratio of 80%. A medical loss ratio of 80% indicates that the insurer is using the remaining 20 cents of each premium dollar to pay overhead expenses, such as marketing, profits, salaries, administrative costs, and agent commissions. The Affordable Care Act sets minimum medical loss ratios for different markets, as do some state laws.
20. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
21. **Normal State Business Hours** - 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
22. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The

NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

23. **NTP Date** – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
24. **Offeror** – An entity that submits a Proposal in response to this RFP.
25. **Personally Identifiable Information (PII)** – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
26. **Primary Care Provider (PCP)** – The Managed Care Organizations participating in the HealthChoice program under which individual Medicaid recipients select or are assigned to a specific MCO which is then responsible for the direct or coordinated delivery of needed medical care for that recipient.
27. **Procurement Coordinator** - The State representative for this Contract who is designated and authorized by the Procurement Officer to act on behalf of the Procurement Officer only as expressly set forth in this solicitation. The Maryland Department of Health may change the Procurement Coordinator at any time by written notice to the Contractor.
28. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Maryland Department of Health may change the Procurement Officer at any time by written notice to the Contractor.
29. **Proposal** – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
30. **Protected Health Information (PHI)** – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
31. **Provider** – (1). Any and all Managed Care Organizations and Disproportionate Share Hospitals in Maryland. (2). A healthcare provider that is part of a given MCO’s network that directly provides medical services to a Medicaid recipient who is enrolled as a member of that MCO and which receives payments from the MCO for the services rendered to the Medicaid recipient. As used in this RFP, “Provider” shall mean definition 1. Anytime provider definition 2 is intended, the word “Provider” will be followed by “(2)”.
32. **Request for Proposals (RFP)** – This Request for Proposals issued by the Maryland Department of Health (Medical Care Programs Office of Finance), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
33. **Security Incident** – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of

violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.

34. **Security or Security Measures** – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
35. **Sensitive Data** - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
36. **Special Project** – Non-core Contract activities as described in Section 2.3.5, that are requested as needed and involve the creation and submission of a pre-performance workplan and estimate of the total number of hours that will be needed to accomplish the activity.
37. **State** – The State of Maryland.
38. **Support Services** - Ancillary services as described in Section 2.3.4, that are provided by the Contractor upon the request of the Contract Monitor that are not part of core Contract activities and do not rise to the level of being a Special Project. Support Services generally involve the work of one, two or several staff from a few hours’ duration to a few days and generally do not involve either the creation and submission of a pre-performance workplan or estimate of the total number of hours that will be needed to accomplish the activity.
39. **Technical Proposal** – A document composed and submitted by vendors in response to Section 5.3, that outlines or describes how the vendor will provide the services needed for the contract.
40. **Total Proposal Price** - The Offeror’s total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B-3** – Financial Proposal Form.
41. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
42. **Working Papers** – Business documents created during scope of work to help facilitate the work and/or work flow of the project and/or work to be performed.

Appendix 2. – Offeror Information Sheet

| Bidder/Offeror | |
|---|--|
| Company Name | |
| Street Address | |
| City, State, Zip Code | |
| Contractor Federal Employer Identification Number (FEIN) | |
| Contractor eMM ID Number | As of the Bid/Proposal submission date, are you registered to do business with the state of Maryland? |
| SBE / MBE/ VSBE Certification | |
| SBE | Number: Expiration Date: |
| VSBE | Number: Expiration Date: |
| MBE | Number: Expiration Date: Categories to be applied to this solicitation (dual certified firms must choose only one category). |
| Bidder/Offeror Primary Contact | |
| Name | |
| Title | |
| Office Telephone Number (with area code) | |
| Cell Telephone Number (with area code) | |
| E-mail Address | |
| Authorized Bid/Proposal Signatory | |
| Name | |
| Title | |
| Office Telephone Number (with area code) | |
| Cell Telephone Number (with area code) | |
| E-mail Address | |

Appendix 3. – Non-Disclosure Agreement (Offeror)

This Non-Disclosure Agreement (the “Agreement”) is made this ___ day of _____ 20___, by and between _____ (hereinafter referred to as "the Offeror ") and the State of Maryland (hereinafter referred to as "the State").

Offeror warrants and represents that it intends to submit a Technical Proposal in response to RFP # **MDH-OPASS-20-** for **Medicaid Agreed Upon Procedures Reviews and Accounting and Consulting Services Related to Capitated Rate Setting for Managed Care Organizations (MCOs) and Medicaid Regulations Compliance Auditing for MCOs and Disproportionate Share Hospitals (DSH)**. In order for the Offeror to submit a Technical Proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information including, but not limited, to **<<typeofNonDisclosureInfoOfferor>>**. All such information provided by the State shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as “Confidential Information”. As a condition for its receipt and access to the Confidential Information described above, the Offeror agrees as follows:

1. Offeror will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received, except in connection with the preparation of its Technical Proposal.
2. Each employee or agent of the Offeror who receives or has access to the Confidential Information shall execute a copy of this Agreement and the Offeror shall provide originals of such executed Agreements to the State. Each employee or agent of the Offeror who signs this Agreement shall be subject to the same terms, conditions, requirements and liabilities set forth herein that are applicable to the Offeror.
3. Offeror shall return the Confidential Information to the State within five Business Days of the State’s Notice of recommended award. If the Offeror does not submit a Proposal, the Offeror shall return the Confidential Information to **Queen Davis , MDH** on or before the due date for Proposals.
4. Offeror acknowledges that the disclosure of the Confidential Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the Offeror’s failure to comply with the requirements of this Agreement. The Offeror consents to personal jurisdiction in the Maryland State Courts.
5. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys’ fees and disbursements) that are attributable, in whole or in part to any failure by the Offeror or any employee or agent of the Offeror to comply with the requirements of this Agreement, Offeror and such employees and agents of Offeror shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
6. This Agreement shall be governed by the laws of the State of Maryland.
7. Offeror acknowledges that pursuant to Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or

imprisonment not exceeding five (5) years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.

8. The individual signing below warrants and represents that they are fully authorized to bind the Offeror to the terms and conditions specified in this Agreement. If signed below by an individual employee or agent of the Offeror under Section 2 of this Agreement, such individual acknowledges that a failure to comply with the requirements specified in this Agreement may result in personal liability.

Offeror: _____

By: _____
Signature/Seal

Printed Name: _____

Title: _____

Date: _____

Address: _____

Appendix 4. – Labor Resume Form

INSTRUCTIONS:

1. For each person proposed, complete one Labor Category Personnel Resume Summary to document how the proposed person meets each of the minimum requirements.

For example: If you propose John Smith, who is your subcontractor, and you believe he meets the requirements of the Group Facilitator, you will complete the top section of the form by entering John Smith’s name and the subcontractor’s company name. You will then complete the right side of the Group Facilitator form documenting how the individual meets each of the requirements. Where there is a time requirement such as three months’ experience, you must provide the dates from and to showing an amount of time that equals or exceeds mandatory time requirement; in this case, three months.

2. Additional information may be attached to each Labor Category Personnel Resume Summary that may assist a full and complete understanding of the individual being proposed.

Labor Classification Personnel Resume Summary

RFP # MDH-OPASS-20-

Instructions: Enter resume information in the fields below; do not submit other resume formats. Submit one resume for each proposed resource

| |
|--|
| Candidate Name: |
| Contractor: (Bidder/OfferorCompanyName) |

Education / Training

| Institution Name / City / State | Degree / Certification | Year Completed | Field Of Study |
|---------------------------------|------------------------|----------------|----------------|
| <add lines as needed> | | | |

Relevant Work Experience

Describe work experience relevant to the Duties / Responsibilities and Minimum Qualifications described in the RFP. Starts with the most recent experience first; do not include non-relevant experience.

| [Organization] | Description of Work... |
|---|------------------------|
| [Title / Role] | |
| [Period of Employment / Work] | |
| [Location] | |
| [Contact Person (Optional if current employer)] | |

| | |
|-------------------------------|------------------------|
| [Organization] | Description of Work... |
| [Title / Role] | |
| [Period of Employment / Work] | |
| [Location] | |
| [Contact Person] | |
| <add lines as needed> | |

Employment History

List employment history, starting with the most recent employment first

| Start and End Dates | Job Title or Position | Organization Name | Reason for Leaving |
|-----------------------|-----------------------|-------------------|--------------------|
| <add lines as needed> | | | |

Personnel Resume Summary (Continued)

*“Candidate Relevant Experience” section must be filled out. Do not enter “see resume” as a response.

References

List persons the State may contact as employment references

| Reference Name | Job Title or Position | Organization Name | Telephone / E-mail |
|-----------------------|-----------------------|-------------------|--------------------|
| <add lines as needed> | | | |

****PO Authors: Update the Section Numbers on the left side of table****

| | |
|---|---|
| Proposed Individual’s Name/Company Name: | How does the proposed individual meet each requirement? |
| LABOR CATEGORY TITLE: | <i>Bidder/Offeror to Enter the Labor Category Name</i> |
| Requirement (See Section 3.10.2) | Candidate Relevant Experience * |
| Education: [Insert the education description from Section 3.10.2 for the applicable labor category] | Education: |
| Experience: [Insert the experience description from Section 3.10.2 for the applicable labor category] | Experience: |
| Duties: [Insert the duties description from Section 3.10.2 for the applicable labor category] | Duties: |

The information provided on this form for this labor category is true and correct to the best of my knowledge:

Contractor Representative:

Proposed Individual:

Signature

Signature

Printed Name:

Printed Name

Date

Date

Sign each Form

Appendix 5. – MCO and DSH Events Schedule

| DUE DATE | EVENT | RESPONSIBLE PARTY |
|---|---|--------------------------|
| Submit with Technical Proposal | Draft Written Protocol of Medicaid Agreed Upon Procedures for MCOs and DSHs – Submit with the Technical Proposal | Vendor |
| Submit with Technical Proposal | Continuity of Operations Plan – Submit with the Technical Proposal | Vendor |
| Submit with Technical Proposal | Work Plan – Submit with the Technical Proposal | Vendor |
| Within 5 Business Days after Recommendation for Contract Award | Insurance Certificates (must be maintained) – Submit to Procurement Officer | Vendor |
| 10 Business Days after Contract Starts (No Later) | Problem Escalation Procedures (PEP) – Submit to Contract Monitor | Vendor |
| 30 Days After Contract Starts | Final Written Protocol of Medicaid Agreed Upon Procedures for MCOs and DSHs - Submit to Contract Monitor | Vendor |
| 30 Days After Contract Starts | Information Security Plan for MCOs and DSHs to be Maintained Throughout the Contract Term – Submit to Contract Monitor | Vendor |
| Start December - May 1st of the Audit Period (Complete No Later than May 1) | Complete all Medicaid Managed Care Organizations (MCOs) Agreed Upon Procedures reviews as required for 9 MCOs – Submit to Contract Monitor | Vendor |
| After Each MCO Review Completion or By April 15th of the Audit Period | MCOs Individual Draft Report for Comments – Submit to Contract Monitor | Vendor |
| Upon Completion or By May 1st | MCOs Individual Final Report after Comments and – Submit to Contract Monitor | Vendor |
| May 1st | Consolidated MCOs Report – Submit to Contract Monitor | Vendor |
| During/Upon Completion of All Reviews By May 1st | Summary Report of all Providers in the Same Format as Each Individual MCO Report – Submit to Contract Monitor | Vendor |
| Start December - May 1st of the Audit Period (Complete No Later than May 1) | Complete MLR examinations for all Medicaid Managed Care Organizations (MCOs) as required – Submit to Contract Monitor | Vendor |
| After Each MCO Review Completion or By April 15th of the Audit Period | MCOs Individual Draft MLR Report for Comments – Submit to Contract Monitor | Vendor |
| May 1st | Consolidated/Individual MCO’s MLR Reports – Submit to Contract Monitor | Vendor |
| 15th of Every Month or More Frequently as Required | Written Progress Reports in an Acceptable Form Approved by the Contract Monitor – Submit to Contract Monitor | Vendor |
| Starts in August of Each Year | Perform a maximum of 31 DSH Audits for Eligible Hospitals (May vary from Year to Year) – Submit to Contract Monitor | Vendor |
| November 30th of Each Audit Period | Draft Report of Eligible Hospitals that qualify for payments under Maryland DSH requirements due to the Medical Assistance Program – Submit to Contract Monitor | Vendor |
| December 31st of Each Audit Period | Final Report of Eligible Hospitals that qualify for payments under Maryland DSH requirements due to the Medical Assistance Program – Submit to Contract Monitor | Vendor |

Medicaid Agreed Upon Procedures, Related Accounting and Consulting Services for Managed Care Organizations (MCOs) and Disproportionate Share Hospitals (DSH)
Solicitation #: MDH-OPASS-22-18952

RFP Document

| DUE DATE | EVENT | RESPONSIBLE PARTY |
|--|---|--------------------------|
| January of Each Period After DSH Audits Completed | Provide List of Eligible Hospitals for DSH Audits - Submit to Vendor | Contract Monitor |
| January 31st of Each Audit Period | Final Report of Eligible Hospitals that qualify for payments under Maryland DSH requirements due to the Centers for Medicare & Medicaid Services – Submitted to Contract Monitor the End of November of Each Audit Period | Vendor/MDH |
| 2-5 Business Days After Receipt/Issuance | Contract Monitor Requested Special Projects – Proposed plan in Writing with Estimated Hours/Labor Categories to Complete the Project – Submit to Contract Monitor | Vendor |
| 15th of the Month Following Completion of Monthly Services | Invoice Submission – Submit to Contract Monitor | Vendor |